



NEW CITY HALL FOR THE CITY OF BISBEE

118 Arizona Street, Bisbee, Arizona

CONSTRUCTION GENERAL CONDITIONS

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**PART I
GENERAL CONDITIONS**

INFORMATION FOR BIDDERS AND BIDDING REQUIREMENTS

1.1 ELIGIBILITY AND PREFERENCE

Contracting with Contractors and Subcontractors under the Contract Documents shall be governed by the provisions of Title 34 of the Arizona Revised Statutes, as amended.

1.1.1 Bidder Qualifications

1.1.1.1 The Bidder must have experience in similar projects. A “similar project” is one that is similar in both nature and scope to this Project. At least two (2) of the Bidder’s Key Personnel must have a minimum of three (3) years’ experience on similar projects. The Bidder must demonstrate successful completion of at least two (2) similar projects, one of which must have a dollar value of at least seventy-five percent (75%) of the total bid for this Project as set forth in the Bid Schedule, both within the past five (5) years. Total bid price does not include any Owner’s Allowances identified. The Bidder must demonstrate it has an experienced employee who will serve as the scheduler, who is dedicated to this Project, and who has successfully employed scheduling techniques appropriate for this Project. “Key Personnel” is defined as individuals who will be directly assigned to this Project and includes, but is not limited to, the owner, Principals of the Bidder, the Project Manager, the Project Superintendent, the scheduler, the Bidder’s construction engineer, and supervisory personnel such as the foremen who will be directly assigned to this Project. Resumes of Key Personnel shall be submitted upon request by BISBEE. “Successful completion” means completion of a project within the established schedule and budget.

1.1.1.2 If requested by BISBEE, the three apparent lowest Bidders shall submit the following documentation for BISBEE’s review, and BISBEE may base its award of a Contract on the information submitted:

- A. Evidence of loss history and underwriting criteria
- B. Bidder’s safety program, including Experience Modifier (EMR)
- C. List of Subcontractors
- D. CPA certified audits for the past three fiscal years of operations
- E. List of references
- F. Similar documents deemed necessary by BISBEE

The documents shall be submitted to BISBEE no later than Five Working Days following the request from BISBEE.

1.1.1.3 BISBEE may also conduct any investigation it deems necessary to determine the Bidder’s ability to perform the Work required by the Contract Documents.

The purpose for requiring these documents is to assist BISBEE in evaluating the ability of each potential contractor to perform the Work in accordance with the Contract Documents in a safe manner.

- 1.1.1.4 References provided by CONTRACTOR are an integral part of Bidder's qualifications. References must be accurate. Bidder authorizes BISBEE's Representative to verify any and all information from references contained herein and hereby releases all those concerned providing information as a reference from any liability in connection with any information they give.

1.2 PRE-BID CONFERENCE

A pre-bid conference will be held on July 26, 2023 at 10:00 a.m. Bidder responsibility issues and Project requirements will be discussed.

1.3 SUBMITTING BIDS

- 1.3.1 Before submitting a bid, Bidders shall carefully examine the Plans, Specifications and all other Contract Documents, visit the Site of the Work, fully inform themselves as to all existing conditions and limitations, and shall include sums in the bid covering the cost of each item included in the Contract.
- 1.3.2 Bidder shall include in the Contract Sum all applicable taxes, permit fees and other costs to Bidder.
- 1.3.3 Bidder shall include in the total bid price all CONTRACTOR's allowances stated in the Bid Schedule of the Contract Documents. Any required allowances are set forth in the Bid Schedule. Unless otherwise provided in the Contract Documents:
 - 1.3.3.1 Allowances shall cover the cost to CONTRACTOR (less any applicable trade discount) of the Materials including equipment required by the allowance, delivered at the site, and all applicable taxes, overhead, profit handling and other General Condition costs, unless Unit Bid Rates are available in the Bid Schedule. Unit Bid Rates from the Bid Schedule shall be used to determine the cost of a change to be paid from an Allowance, when applicable.
 - 1.3.3.2 Any remaining Allowance Amount shall be returned to BISBEE at the end of the project by deductive change order.
 - 1.3.3.3 Whenever the cost is more or less than the allowance, the Contract Price shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, overhead, profit and other expenses.
- 1.3.4 Lump Sum and Unit Prices bid shall include overhead, profit, bonds, taxes, handling and other General Condition costs.
- 1.3.5 No bid shall be considered which is deemed as an irregular bid or which fails to conform in all material respects to the Plans, Specifications and Contract Documents. Bids may be deemed irregular and may be considered non-responsive for any of the following

reasons:

1.3.5.1 If the bid is incomplete.

1.3.5.2 If the Bidder does not supply, or has improper or inadequate state contractor's license(s), to perform the Work.

1.3.5.3 If there are unauthorized additions, statements, interlineations, alterations, conditional or alternate bids or other irregularities of any kind.

1.3.5.4 If the Bidder adds any provisions reserving the right to accept or reject an Award or to enter into a Contract pursuant to an Award.

1.3.5.5 If the Bidder fails to submit any required document listed in Section 1.3.11 or, when requested, the Bidder fails to submit any documents or information pursuant to Section 1.1.1.2.

1.3.5.6 If numbers are not stated both in writing and in figures where so required. In case of a difference in written words and figures in a bid, the amount stated in written words shall govern.

1.3.5.7

1.3.6 No electronic mail, facsimile, telegraphic, oral or telephonic bids will be considered.

1.3.7 Bids shall be received through by 1:30 p.m. Arizona Time on August 17, 2023. It is the sole responsibility of the Bidder to see that his bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids will be rejected.

1.3.8 Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted so that the Contract shall be read and enforced as though it were included therein.

1.3.9 Bidders shall familiarize themselves with the provisions of the laws, codes and regulations of the State of Arizona, BISBEE, Cochise County, local agencies and municipalities that have jurisdiction at the location of the Site. CONTRACTORS shall comply with, and require all Subcontractors to comply with, all state and local contractor's license laws.

1.3.10 Bids must remain valid for 90 days following bid opening.

1.3.11 The following documents shall be submitted with the bid:

- A. Completed and signed Bid Form
- B. Copy of the original Bid Bond
- C. No Collusion Affidavit
- D. Authorized Signature Form
- E. List of Subcontractors and Suppliers
- F. Bidder's State of Arizona Contractor's License(s) Number(s).

1.3.12 Public bid opening will be conducted on August 17, 2023 at 2:00 p.m. Arizona Time at 76 Erie Street, Bisbee, Arizona.

1.4 BID SECURITY

- 1.4.1 Pursuant to A.R.S. § 34-201, the bid shall be accompanied by a copy of a certified check, cashier's check or Bid Bond from a surety company holding a certificate of authority to transact surety business in the State of Arizona pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes, and any amendments thereto. The Bonds shall be made payable and acceptable to BISBEE. The Bid Bond shall be for an amount equal to ten percent (10%) of the bid, payable without condition to BISBEE as a guarantee that the Bidder, if awarded the Contract, will promptly execute such Contract in accordance with the bid and in manner and form required by these Contract Documents and will furnish good and sufficient bond for the faithful performance of the same. The surety Bond shall not be executed by an individual surety or sureties.
- 1.4.2 The lowest responsive, responsible bidder shall provide the original of the bid security within three days after notification by BISBEE. The bid security of the successful Bidder will be retained until the Contract is signed and satisfactory Bonds and Certificates of Insurance furnished, or other disposition made thereof.

1.5 SITE INVESTIGATION AND REPRESENTATIONS

The bidder must be acquainted with the nature and location of the Work and general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, the conformation and condition of the ground, the character, quality and quantity of surface and subsurface materials to be encountered, the character of equipment and facilities needed before and during performance of the Work and all other matters which can in any way affect the Work or costs under this contract. Any failure by the bidder to acquaint himself with information concerning these conditions does not relieve the responsibility for properly estimating the difficulty or cost of successfully performing the Work. BISBEE assumes no responsibility or liability for any understanding or representations made by any of its employees or agents during or prior to the execution of this contract, unless (1) such understanding or representations are expressly stated in the contract, and (2) the contract expressly provides that the responsibility is assumed by BISBEE.

1.6 WITHDRAWAL OF BID

Any Bidder may withdraw or revise his bid by written request, at any time prior to the deadline for bid submittal as set forth in the Invitation for Bids. Any withdrawal or revision must be done on a copy of the bid form and must be signed by the person indicated on the Authorized Signature Form. Requests received after the time for submitting bids, or received at any place other than the place specified for receiving bids, will not be

considered. If a Bidder withdraws his bid after the time set for opening bids, the Bid Bond is subject to forfeiture as liquidated damages.

1.7 INTERPRETATION OF PLANS AND DOCUMENTS

- 1.7.1 If any person contemplating submitting a bid for the proposed Work is in doubt as to the true meaning of any part of the Plans, Specifications or other Contract Documents, or finds discrepancies in or omissions from the Plans or Specifications, they may submit to BISBEE a written request for an interpretation or correction thereof. The request must be made in writing and delivered at least seven (7) days prior to bid opening. Any interpretation or correction of the Contract Documents will be made only by Addendum. BISBEE will not be responsible for any other explanations or interpretations of the Contract Documents.
- 1.7.2 Should conflicts occur in or between Plans and Specifications, CONTRACTOR is deemed to have estimated the more expensive of the two unless he has asked for and obtained a written decision as required in Section 1.7.1 before submission of his bid as to which method or Materials will be required.

1.8 SUBSTITUTION OF MATERIAL OR EQUIPMENT

- 1.8.1 Where an item or Material is specified by a trade or manufacturer's name, it is done for the purpose of establishing a basis of quality, and not for the purpose of limiting competition, unless specifically noted. BISBEE's intent is to consider alternative products which have the desired essential characteristics. BISBEE will consider any such product offered. Requests for approval of alternative products shall be made through Bidders bidding as prime contractors. No approvals for substitutions will be granted directly to suppliers, distributors, or subcontractors. Pursuant to A.R.S. § 34-104-C, the following procedures will be used:
- 1.8.1.1 Bidders desiring to submit alternative product proposals for prior approval shall submit such proposals to BISBEE at least ten (10) days prior to the original deadline for receiving bids, or any published extension thereof. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute, including drawings, cut sheets, performance and test data, and any other information necessary for an evaluation. A statement setting forth any changes in other Materials, equipment or other work that incorporation of the substitute would require shall be included. BISBEE will consider such request and either approve or reject all alternative product proposals submitted.

If, by the close of the fifth day prior to the deadline for receiving bids, BISBEE has approved any alternative product proposals, the Bid Documents shall be modified to include the alternative products. BISBEE shall publish the modification in the same manner as the original Bid Documents at least five (5) days prior to the deadline for receiving bids. BISBEE's decision of approval or disapproval of a proposed substitute shall be final. After the award of Contract, the equivalency evaluations conducted during the bidding period may be

reviewed by appointment with BISBEE.

1.8.2 Whenever an item of Material or piece of equipment is specified with one or more named manufacturer(s) and is followed by the words “No other manufacturers will be considered,” only the listed manufacturer(s) will be considered by BISBEE.

1.8.3 Whenever an item of Material or piece of equipment is specified with one or more named manufacturer(s), an “or equal” manufacturer shall apply whether the term “or equal” is listed or not listed within the Specifications.

1.9 ADDENDA

Any Addenda issued during the time of bidding shall become a part of the documents used by the Bidder for the preparation of his bid, shall be covered by the bid, and shall be made a part of the Contract Documents. It is the sole responsibility of the Bidder to ensure that they have received and reviewed all Addenda, and that receipt of such Addenda is duly acknowledged on the Bid Form.

1.10 AWARD OR REJECTION OF BIDS

1.10.1 The Contract will be awarded to the lowest responsive, responsible Bidder determined from the Base Bid, plus any combination of Bid Alternates that BISBEE may select, which comply with these instructions and with the Invitation for Bids. BISBEE, however, reserves the right to accept or reject any or all bids, to waive any informality or irregularity in the bids received or to withhold the award for any reason BISBEE determines. Bids will be received until the time and date designated in the Invitation for Bids. Bids submitted after the designated deadline will be rejected.

1.10.2 Bids shall be opened in public and the amount of the bid read aloud. After the bid opening, BISBEE shall analyze the bids and notify all Bidders of the name of the apparent low bidder, or, if the analysis results in a recommendation to award the Contract to a Bidder other than the apparent low Bidder, the Bidder who is recommended for award of the Contract. This will be done by issuing a Notice of Apparent Lowest Responsible Bidder.

1.10.3 BISBEE will not accept bids or award Contracts to any person in arrears to BISBEE for any debt or Contract, in default on any Surety bond, or otherwise deficient in any obligation to BISBEE.

1.11 BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to make, file or be interested in more than one (1) bid for the same WORK unless alternate bids are called for. A person, firm, or corporation who has submitted a subproposal to a Bidder, or who quoted prices on Materials to a Bidder, is not thereby disqualified from submitting a subproposal or quoting prices to other Bidders but must quote the same subproposal or price to all

Bidders.

1.12 CONTRACT AND BONDS

1.12.1 BISBEE will notify the successful Bidder that their bid has been accepted via a written Notice of Award to the address listed on their Bid Form. The form of Contract that the successful Bidder as CONTRACTOR will be required to execute, and the forms of bonds which he will be required to furnish along with a form of insurance certificate are included in the Contract Documents. The Contract, bonds, insurance certificate, and other required forms will be executed in two (2) original counterparts within ten (10) days after receipt of the Notice of Award or their Bid Security shall be forfeited as provided elsewhere herein.

1.12.2 The successful Bidder, simultaneously with the execution of the Contract, will be required to furnish the following required documents:

1.12.2.1 Bonds: a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum, and a Materials and Labor (Payment) Bond in an amount equal to one hundred percent (100%) of the Contract Sum. Bonding companies and insurance carriers shall be "Best Rated A" or better by the A.M. Best Company or comparable rating as determined at the sole discretion of BISBEE. Each bond shall be executed by a surety (bonding company) duly licensed in and possessing a certificate of authority to transact surety business in the State of Arizona pursuant to Title 20, Chapter 2, Article 11 and acceptable to BISBEE. The Surety Bond shall not be executed by an individual surety or sureties. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in the State of Arizona. The Bonds shall have attached thereto a certified copy of Power of Attorney for the signed official executing the bonds.

1.12.2.2 Insurance: a certificate of insurance complying with the requirements listed elsewhere within the Contract Documents.

1.12.2.3 Tax Liability Bond: in conformance with A.R.S. § 42-5006 and the Arizona Department of Revenue criteria concerning construction project tax liabilities and, one of the following:

- A. A copy of the Tax Liability Bond, issued by the Arizona Department of Revenue, naming this specific project as being bonded.
- B. A current Tax Liability Bond Exemption Certificate, issued by the Arizona Department of Revenue, naming this specific project as being exempt.

1.12.2.4 Other: a current, fully complete W-9, and all other forms as specified in the Bid Documents or Notice of Award.

1.13 ASSIGNMENT OF CONTRACT

No assignment by CONTRACTOR of any Contract to be entered into hereunder, or any part thereof, or of funds to be received there under by CONTRACTOR, will be recognized by BISBEE unless such assignment has had prior approval of BISBEE and the Surety has been given due notice of such assignment in writing and has consented thereto in writing.

1.14 CONTRACT TIME

CONTRACTOR shall commence Work under the Contract on the day indicated in the Notice to Proceed or within fourteen (14) days thereafter. CONTRACTOR shall achieve Substantial Completion within THREE HUNDRED consecutive calendar days after the date of the Notice to Proceed, and Final Completion within SIXTY consecutive days following Substantial Completion in accordance with Section 9.2. No Work shall commence prior to issuance of a Notice to Proceed, including mobilization on site.

1.15 COMPLIANCE WITH PERMIT CONDITIONS

This Project includes work that will affect facilities of various agencies, including water and electrical utilities. Applicable licenses, permits and specifications are bound herein and CONTRACTOR shall comply with all such specifications and permit conditions. CONTRACTOR is responsible for procuring all permits and licenses, paying all charges, fees and sales tax, and giving any notices necessary and incident in performing the Work unless noted otherwise. BISBEE will exempt CONTRACTOR from paying the standard fees for permits issued by BISBEE provided that all the permits are issued prior to the commencement of the Work.

1.16 BISBEE'S REPRESENTATIVE

- 1.16.1 This Project will be coordinated by BISBEE's Representative, Richard C. Cayer, PE, who will (1) oversee the progress of the Work, (2) receive submittals, requests for information and other information from CONTRACTOR, (3) make recommendations regarding Change Orders and requests for extensions of time, (4) make recommendations regarding requests for payment, (5) maintain Project records, (6) determine Substantial and Final Completion of the Project, and (7) do other tasks related to the coordination of the Work.
- 1.16.2 BISBEE's Representative will approve shop drawings, make interpretations of the Contract Documents and make determinations regarding substitution of methods and Materials. Other duties are set forth in the Contract Documents. Drawings and Specifications and copies thereof furnished by BISBEE are and shall remain the property of BISBEE. They are to be used only with respect to this Project and are not to be used on any other Project.

1.16.3 All instructions to CONTRACTOR shall be forwarded through BISBEE's Representative. CONTRACTOR shall not be relieved from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of BISBEE's Representative in administration of the Contract, or by inspections, tests or approvals required.

1.17 SEPARATE CONTRACTS

Separate Contracts may be let by BISBEE to perform other or additional work on or near the Work covered by this Contract. CONTRACTOR shall be responsible for coordinating the sequencing of the Work under those separate Contracts identified/listed in the Supplementary Conditions of the Contract Documents. The bid shall include an amount for the administration of the sequencing of these Contracts. The requirements of Section 5.8 shall apply.

1.18 BID PROTESTS

1.18.1 Bidders who are aggrieved in connection with the solicitation or award of a contract may protest to BISBEE Council in accordance with § 36-55 of BISBEE Code. The protest shall be submitted in writing to the City Administrator within ten days after the bidder knows or should have known of the facts giving rise to the protest. The Administrator shall place the protest on the next Council agenda if not resolved prior to that time.

1.18.2 BISBEE Council shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, contractor, actual or prospective, concerning the solicitation or award of a contract.

1.18.3 If the protest is not resolved by mutual agreement, the Purchasing Agent shall issue notice in writing of the Council's decision. The notice shall:

1.18.3.1 State the reason for the actions taken

1.18.3.2 Inform the protestor of the right to judicial review

1.18.4 A copy of the decision under this section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

1.18.5 A decision under this section shall be final and conclusive unless fraudulent, or unless any person adversely affected by the decision commences an action in court.

**PART II
GENERAL CONDITIONS**

DEFINITIONS

Wherever in these Specifications, or in other Contract Documents, the following terms are used, the intent and meaning shall be interpreted as shown below. Additional definitions and abbreviations pertaining to this Project will be found in the Supplementary Conditions.

2.1 DEFINITIONS

- 2.1.1 Addenda: Written and/or graphic instruments issued after Advertisement of, but prior to the opening of the bids, which clarify, correct, and make additions, deletions or revisions to the Contract Documents.
- 2.1.2 Advertisement: The public announcement, as required by law, inviting bids for Work to be performed or Materials to be furnished.
- 2.1.3 A/E: The design professional designated by BISBEE to prepare Plans and Specifications for the Work, to make interpretations of the Contract Documents, to review and approve shop drawings and to perform other duties as set forth in the Contract between BISBEE and A/E. May be an Architectural or Engineering firm, or BISBEE Staff.
- 2.1.4 Award: The formal action of BISBEE Council in accepting a bid.
- 2.1.5 Bid Security: Refers to the certified check, cashier's check or surety bond which is required to be submitted with the bid to insure execution of the Contract and the furnishing of the required bonds and insurance certificates.
- 2.1.6 Bidder: Any individual, firm, partnership, or corporation submitting a bid for the work contemplated, acting directly or through a duly authorized agent.
- 2.1.7 Change Order: A document that authorizes an addition, deletion or revision in the Work or Deliverables, or an adjustment in the Contract Amount or the period of services, issued on or after the Effective Date of this Contract. The Contract Amount and/or Schedule may be changed only by Change Order.
- 2.1.8 Clerk: The duly authorized person who performs the duties of the BISBEE Clerk.
- 2.1.9 Construction Schedule: The schedule produced by CONTRACTOR in response to the requirements of Section 5.1.
- 2.1.10 Contract: The written instrument executed by CONTRACTOR and BISBEE by which CONTRACTOR is bound to furnish all labor, equipment and Materials, to perform the Work specified and by which BISBEE is obligated to compensate CONTRACTOR

therefore at the prices set forth therein. The Contract Documents are herewith by reference made a part of the Contract as if fully set forth therein.

- 2.1.11 Contract Documents: Those documents, all of which together with this Contract, form the entire integrated agreement between BISBEE and CONTRACTOR. Contract Documents include the Invitation for Bids, Information for Bidders and Bidding Requirements, Bid, Contract, General Conditions, Supplementary Conditions, Technical Specifications, Construction Schedule, Payment and Performance Bonds, Plans, A/E's Instruction Bulletins, and all Addenda and Modifications thereto. A Modification is (1) a written amendment to the Contract signed by both Parties, (2) a Change Order, (3) a written interpretation issued by A/E, or (4) a written order for a minor change in the Work issued by A/E.
- 2.1.12 Contract Sum: The total amount payable by BISBEE to CONTRACTOR for the performance of the Work under the Contract Documents. The Contract Sum is the amount stated in the Contract and adjusted by any Change Order issued pursuant to the Contract Documents.
- 2.1.13 Contract Time: The time set forth in the Contract for completion of the Work required by the Contract Documents.
- 2.1.14 CONTRACTOR: The individual, firm, partnership or corporation that has entered into a Contract with BISBEE for the Work. CONTRACTOR is required by law to be licensed in the classification of the Work to be performed and will perform work or render services as a prime contractor.
- 2.1.15 Days: Unless otherwise designated, days means calendar days.
- 2.1.16 Final Completion: The date, more fully described in Section 9.2.2, when all items of the Work are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date that initiates the Warranty period.
- 2.1.17 Improvements: Means the same as "Work."
- 2.1.18 Initial Construction Schedule: The schedule prepared by CONTRACTOR in accordance with Section 5.1 and which includes the Milestone and Completion Dates specified in the Contract Documents.
- 2.1.19 Materials: Materials incorporated in the Project, Equipment and other Supplies used in the performance of the Work.
- 2.1.20 Notice of Apparent Lowest Responsible Bidder: The notice given to inform all bidders of BISBEE staff's determination of the lowest responsive, responsible Bidder and its recommendation to Council for Award of the Contract.

- 2.1.21 Notice of Award: The notice given to inform the successful Bidder of the Award of the Contract.
- 2.1.22 Notice to Proceed: A written notice given by BISBEE to CONTRACTOR fixing the date on which CONTRACTOR will start to perform its obligations to complete the Work, or a Construction Phase, under this Contract.
- 2.1.23 Payment Bond: A bond furnished by CONTRACTOR and an acceptable Surety, in compliance with the requirements set forth in the Contract Documents, for the purpose of guaranteeing that CONTRACTOR promptly pays all monies due persons supplying labor or material to be used in prosecution of the Contract. Also known as a Labor and Materials Bond.
- 2.1.24 Performance Bond: A bond furnished by CONTRACTOR and an acceptable Surety, in compliance with the requirements set forth in the Contract Documents, for the purpose of guaranteeing the faithful performance and completion of the Work covered by the Contract.
- 2.1.25 Plans: All approved drawings or reproductions thereof pertaining to details of the Work and which are made a part of the Contract Documents.
- 1.3.26 Progress Payment Application: The form that is accepted by BISBEE and used by CONTRACTOR in requesting progress payments or final payment, and which will include such supporting documentation as is required by the Contract Documents and/or BISBEE.
- 2.1.27 Project: The facilities, together with all on-site and off-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred there from. May be the whole or a part.
- 1.3.28 Punch List: Items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended, and which will not prevent the issuance of a Certificate of Substantial Completion and/or Certificate of Occupancy.
- 1.3.29 Record Drawings: Drawings (plans) prepared after construction is complete that represent the Work accomplished under the Contract.
- 1.3.30 Shop Drawings: All drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work prior to its installation.
- 2.1.31 Site: The land or premises on which the Work is located, which is more fully described

in the Contract Documents.

- 2.1.32 Specifications: The part(s) of the Contract Documents used during construction services consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto. May also be referred to as Standard and/or Technical Specifications.
- 1.3.33 Substantial Change: A Substantial Change in the Contract is any change in the scope of service for the Project that adds or deletes an item of work not originally included in the Project scope; that increases or decreases the cost of performance by more than \$25,000 or one percent (1%) of the original contract value, whichever is greater; that changes the Project Schedule in a manner that modifies the schedule critical path; or that modifies a quality standard more than the allowable deviations defined in the Specifications.
- 2.1.34 Supplementary Conditions: Those terms and conditions applicable to the Work which are specifically set forth in the Supplementary Conditions section of the Contract Documents.
- 2.1.35 Subcontractor: An individual, firm or corporation having a direct contract with CONTRACTOR for the provision of labor, materials or other services required to be performed as part of the Work at the Site for which CONTRACTOR is responsible under the Contract Documents.
- 2.1.36 Substantial Completion: The construction services for the Work, or an agreed upon portion thereof, has progressed to the point where, in the opinion of Bisbee's Representative, as evidenced by a Certificate of Substantial Completion and/or Certificate of Occupancy, such construction services are sufficiently complete in accordance with the Contract Documents so that the Work (or specified part) can be utilized for the purposes for which it is intended, without any outstanding concurrent Work at the site, except as may be required to complete or correct Punch List items. This may include, but is not limited to: (i) approval by Bisbee Fire Department; (ii) elevator permit; (iii) all systems in place, functional, and displayed to Bisbee or its representative; (iv) all materials and equipment installed; (v) all systems reviewed and accepted by all consulting engineers and/or architects; (vi) draft operations and maintenance manuals and record documents reviewed and accepted by Bisbee; (vii) Bisbee operation and maintenance training complete; (viii) HVAC test and balance completed (Provide minimum 30 days prior to projected substantial completion); and (ix) landscaping and site work. If no such certificate is issued, Substantial Completion takes place when the construction services Work or a Construction Phase is complete and ready for final payment as evidenced by BISBEE's Representative's written recommendation of final payment. The terms "substantially complete" and "substantially completed" as applied to all or part of the construction Work refers to Substantial Completion thereof.

- 2.1.37 Work: The word "Work", "Improvements" or "Project" includes any or all of the Improvements as described and required to be furnished pursuant to this Contract. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents.
- 2.1.38 Work Directive: Supplemental drawings or instructions, which may be issued as necessary from time to time to make clear or define in greater detail the intent of the drawings and Specifications. A Change Order shall accompany a Work Directive if extra cost and/or time are known to be involved.
- 2.1.39 Working Days: Days exclusive of Saturday, Sunday and BISBEE recognized legal holidays.
- 2.1.40 BISBEE: City of Bisbee, Arizona.
- 2.1.41 Bisbee's Representative or Bisbee's Agent: The authorized representative of BISBEE, assigned to the Project Work, the Project Site or any part thereof during the performance of the Work by CONTRACTOR and until final acceptance. Bisbee's Representative may be a Project Manager, an Inspector, a Building Official or other BISBEE staff as appropriate for the Project.

**PART III
GENERAL CONDITIONS**

AWARD AND EXECUTION OF CONTRACT

3.1 AWARD

- 3.1.1 As soon as practicable after the date of opening the bids, BISBEE Council will Award the Contract to the lowest responsive, responsible Bidder or will reject all bids.
- 3.1.2 A written Notice of Award will be sent to the successful Bidder and shall be considered issued on the day sent.
- 3.1.3 The low bid will be determined by the lowest net total from a fully qualified, responsive and responsible Bidder arrived at by combining the Bidder's lump sum and unit price totals or base bid price and the bid prices of the alternates that are selected and accepted by BISBEE. BISBEE may accept or reject any or all alternates.

3.2 EXECUTION OF CONTRACT

- 3.2.1 The successful Bidder shall, within the time specified in Information for Bidders and Bidding Requirements, execute the Contract, and shall file insurance policies and/or certificates of insurance as required herein. If CONTRACTOR fails or refuses to enter into the Contract within the time stated, BISBEE may declare a forfeiture of CONTRACTOR's Bid Security as damages for failure to enter into the Contract.
- 3.2.2 Execution of the Contract by CONTRACTOR is a representation that CONTRACTOR has visited the Site, become familiar with the local conditions under which the Work is to be performed, and has correlated personal observations with the requirements of the Contract Documents.

3.3 CONTRACTOR'S INSURANCE

- 3.3.1 General: CONTRACTOR agrees to comply with all BISBEE ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of CONTRACTOR, CONTRACTOR shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A or above with policies and forms satisfactory to BISBEE. Failure to maintain insurance as specified may result in termination of this Contract at BISBEE's option.
- 3.3.2 No Representation of Coverage Adequacy: By requiring insurance herein, BISBEE does not represent that coverage and limits will be adequate to protect CONTRACTOR. BISBEE reserves the right to review any and all insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in the Contract Documents

or failure to identify any insurance deficiency shall not relieve CONTRACTOR from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of the Contract.

- 3.3.3 Additional Insured: All insurance coverage and self-insured retention or deductible portions, except Workers Compensation Insurance and Professional Liability Insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of the Contract, BISBEE, BISBEE's Representative, A/E, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of these Contract Documents.
- 3.3.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until final acceptance of the Work or services required to be performed, including during the warranty period.
- 3.3.5 Primary Insurance: CONTRACTOR's insurance shall be primary, non-contributory insurance as respects performance of subject Contract and in the protection of BISBEE as an Additional Insured. Any insurance or self-insurance maintained by BISBEE, its officials, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute to it.
- 3.3.6 Occurrence Basis: All insurance coverage shall be on an occurrence basis and not a claims made basis.
- 3.3.7 Waiver: All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against BISBEE, its agents, representatives, officers, directors, officials and employees for any claims arising out of the Work. CONTRACTOR shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- 3.3.8 Policy Deductibles and or Self-Insured Retentions: The policies set forth in these requirements may provide coverage which contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to BISBEE. CONTRACTOR shall be solely responsible for any such deductible or self-insured retention amount. BISBEE, at its option, may require CONTRACTOR to secure payment or such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 3.3.9 Use of Subcontractors: If any Work under the Contract Documents is subcontracted in any way, CONTRACTOR shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting BISBEE and CONTRACTOR. CONTRACTOR shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 3.3.10 Evidence of Insurance: Prior to commencing any Work under the Contract Documents,

CONTRACTOR shall furnish BISBEE with Certificate(s) of Insurance, or formal endorsements as required by the Contract Documents, issued by CONTRACTOR's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage specified in the Contract Documents and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Contract. If a Certificate of Insurance is submitted as evidence of coverage, BISBEE shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. Such certificates shall identify the Project. If any of the above cited policies expire during the life of the Contract, it shall be CONTRACTOR's responsibility to forward renewal Certificates within fourteen (14) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

3.3.10.1 BISBEE, CM, A/E, their agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

- A. Commercial General Liability – Under ISO Form CG 20 10 04 13 and CG 20 37 04 13 or equivalent.
- B. Auto Liability – Under ISO Form CA 20 48 10 13 or equivalent.
- C. Excess Liability – Follow Form to underlying insurance as required.

3.3.10.2 CONTRACTOR's insurance shall be primary insurance as respects performance of Contract.

3.3.10.3 Certificate shall state that should any of the required policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

3.3.10.4 Project descriptive information including:

- A. Project Name
- B. Project Number
- C. Contract Number

3.3.11 REQUIRED COVERAGE:

3.3.11.1 Commercial General Liability: CONTRACTOR shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit on a per project basis endorsed by means of ISO Endorsement CC-2503 1185 or equivalent. Commercial General Liability coverage specifically shall contain contractual liability insurance covering the contractual obligations of this Contract. The policy shall cover liability arising from premises, operations, independent contractors, products-completed

operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Offices, Inc. policy form CG 20 10 04 13 and CG 20 37 04 13 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, BISBEE, A/E, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under Insurance Service Offices, Inc. Commercial General Liability Additional Insured Endorsement form 10 04 13 and CG 20 37 04 13, or equivalent. CONTRACTOR, its successors and or assigns, is required to maintain Commercial General Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject Work. CONTRACTOR shall submit Certificate of Insurance evidencing such Commercial General Liability insurance during said three year period containing all of the insurance requirements set forth herein including naming BISBEE, A/E, their agents, representatives, officers, directors, officials and employees as Additional Insured as required. If any excess insurance is utilized to fulfill the requirements of this Paragraph, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- 3.3.11.2 Vehicle Liability: CONTRACTOR shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on CONTRACTOR's owned, hired, and non-owned vehicles assigned to or used in the performance of the Work. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of the Work, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, BISBEE, A/E, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Officers, Inc. Business Auto policy Designated Insured Endorsement form CA 20 48 10 13 or equivalent. If any excess insurance is utilized to fulfill the requirements of this Paragraph, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- 3.3.11.3 Worker's Compensation Insurance: CONTRACTOR shall maintain Worker's Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR's employees engaged in the performance of the Work and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.
- 3.3.11.4 Umbrella/Excess Liability: CONTRACTOR must carry Umbrella/Excess Liability insurance with an unimpaired limit of not less than \$4,000,000.00 per occurrence combined limit Bodily Injury and Property Damage that "follows form" and applies in excess of the Commercial General Liability, Business

Automobile Liability and Employer's Liability, as required above.

- 3.3.11.5 Builder's "All Risk": CONTRACTOR shall maintain Builder's "All Risk" Insurance in an amount not less than one hundred percent (100%) of the Contract price. Such policy shall include coverage for fire, lightening, vandalism, malicious mischief, riot, civil commotion, smoke, sprinkler leakage, water damage, windstorm, hail, earthquake, landslide, flood and collapse or loss due to the results of defective design, negligent workmanship or defective material during the Contract Time and until Final Acceptance of the Work by BISBEE. On roadway, pipeline, and similar Projects where fire hazard is negligible or nonexistent, BISBEE may waive the requirement for Builder's "All Risk" Insurance and/or accept an installation waiver.
- 3.3.11.6 Additional Coverage: To the fullest extent permitted by law, if CONTRACTOR maintains higher insurance limits than the minimums shown above, BISBEE requires and shall be entitled to coverage for the higher limit maintained.

3.4 REQUIREMENT OF CONTRACT BONDS

- 3.4.1 Concurrently with the execution of the Contract, CONTRACTOR shall furnish BISBEE the following bonds, which shall become binding upon the Award of the Contract to CONTRACTOR:
- 3.4.1.1 A Performance Bond in an amount equal to the full Contract Price, including the maximum allowed owner's contingency, conditioned upon the faithful performance of the Contract in accordance with Plans, Specifications and Conditions thereof. All performance bonds shall be executed on the Arizona Statutory Performance Bond form, duly executed by the CONTRACTOR as Principal and having as Surety thereon a Surety company approved by BISBEE and holding a Certificate of Authority to transact surety business in the State of Arizona by the Arizona Department of Insurance. Individual sureties are unacceptable. Such bond shall be solely for the protection of BISBEE. The Performance Bond shall remain in force the greater of (a) two years after Final Completion of the Work, or (b) until the expiration of all warranties and guarantees as required by the Contract.
- 3.4.1.2 A Payment Bond in an amount equal to the full Contract Price, including the maximum allowed owner's contingency, solely for the protection of the claimants supplying labor or Materials to CONTRACTOR or its Subcontractors in the prosecution of the Work provided for in such Contract. All payment bonds shall be executed on the Arizona Statutory Payment Bond form, duly executed by CONTRACTOR as Principal and having as Surety thereon a Surety company approved by BISBEE and holding a Certificate of Authority to transact surety business in the State of Arizona by the Arizona Department of Insurance. Individual sureties are unacceptable. The Payment Bond shall remain in effect for at least one year after Final Completion of the Work.
- 3.4.2 Each such bond shall include a provision allowing the prevailing party in a suit on such

bond to recover as a part of this judgment such reasonable attorney's fees as may be fixed by a judge of the court.

- 3.4.3 Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes and any amendments thereto. The bonds shall be made payable and acceptable to BISBEE. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State and the bonds shall have attached thereto a certified copy of the Power of Attorney of the signing official.
- 3.4.4 All Insurers and Sureties shall have, at the time of submission of the bonds, an A.M. Best's Key Rating Guide of "A" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.
- 3.4.5 If, for any reason, the bonds provided for herein are not maintained in effect as required herein, the surety files for protection under the federal bankruptcy laws or similar state laws or the surety rating decreases from that required under Section 8.3 (Acceptable Surety) of the Contract, BISBEE may require CONTRACTOR to procure bonds from another surety to be substituted in lieu of the bonds originally provided to BISBEE, and the failure to procure the substitute bonds shall constitute a breach of the Contract entitling BISBEE to any of the remedies set forth in the Contract.

3.5 INDEMNIFICATION

- 3.5.1 To the fullest extent permitted by law, CONTRACTOR, its successors and assigns shall defend, indemnify and hold harmless BISBEE, its officers and employees from and against all liabilities, damages, penalties, fines, demands, judgements, losses and costs (including reasonable attorney fees and court costs including any appellate proceedings to which any such Indemnified Party may become subject) to the extent caused by the negligence, recklessness or intentional wrongful conduct of CONTRACTOR or other persons employed or used by CONTRACTOR in the performance or non-performance of this Contract. CONTRACTOR's duty to defend, indemnify and hold harmless BISBEE, its officers and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction or damage of property including loss of use of resulting there from, caused by CONTRACTOR's negligence, recklessness or intentional wrongful conduct in the performance or non-performance of this Contract and the negligence, recklessness or intentional wrongful conduct of any person employed by CONTRACTOR or used by CONTRACTOR in the performance of this Contract.
- 3.5.2 Insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this

Paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

3.6 SAFETY WARRANTY

- 3.6.1 BISBEE shall not be responsible for safety on the project site, including but not limited to, providing or assuring a safe place for the performance of the construction, methods of construction employed by CONTRACTOR, subcontractors, suppliers or other entities or their partners, officers, agents, employees, or occupancy by any person.
- 3.6.2 CONTRACTOR shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health or as specified by Bisbee County. CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on its own responsibility or as BISBEE may determine, reasonably necessary to protect the life and the health of employees on the job, the safety of the public and to protect property in connection with the performance of the Work. Precaution shall be exercised by CONTRACTOR at all times for the protection of persons (including employees and BISBEE representatives) and property. CONTRACTOR shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State occupational safety and health acts, and standards and regulations promulgated thereunder.
- 3.6.3 CONTRACTOR warrants that CONTRACTOR is aware of and understands the hazards presented to persons, property and the environment relating to and arising out of the Work. In the event CONTRACTOR or any of CONTRACTOR's Subcontractors are working or operating in an unsafe manner, CONTRACTOR shall immediately take full and appropriate steps to assure the safety of those working in the job site. CONTRACTOR acknowledges BISBEE's right under this Contract to stop work if BISBEE determines the Work is not proceeding in a safe manner and may result in injury to persons or property. BISBEE and A/E shall not be liable for the costs incurred by CONTRACTOR if the Work is stopped for safety reasons. BISBEE shall issue a stop work order until the violation ceases. BISBEE shall immediately notify CONTRACTOR in writing of the reasons Work was stopped.

3.7 NOTICE TO PROCEED

CONTRACTOR or Subcontractors shall not start Work on any part of the Project until Notice to Proceed (NTP) has been issued by BISBEE's Representative. The NTP may be delivered to CONTRACTOR electronically, by mail, or in person. The date for the official start of the Contract will be set forth in the NTP, which shall not require commencement of the construction phase Work prior to CONTRACTOR's receipt of the required permit(s). The NTP shall not be issued until the Contract has been executed and all insurance, bonds and other required documents have been submitted to BISBEE.

**PART IV
GENERAL CONDITIONS**

COMMENCEMENT, PROSECUTION AND PROGRESS

4.1 COMMENCEMENT

4.1.1 Within twenty-one (21) days after the Notice of Award, a pre-construction conference will be held to establish a working understanding among the Parties as to the Work and to discuss the schedules referred to in Section 5.1, procedures for handling submittals, processing Applications for Payment, and maintaining required records.

4.1.1.1 The conference shall be attended by CONTRACTOR and his superintendent, Principal Subcontractors, Representatives of principal suppliers and manufacturers as appropriate, Representatives of BISBEE, A/E, and others as requested by CONTRACTOR, BISBEE, or A/E.

4.1.1.2 The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The agenda will include but not be limited to discussion regarding:

- A. CONTRACTOR's Initial Construction Schedule (See Section 5.1)
- B. Establishing the Notice to Proceed date
- C. Transmittal, review, and distribution of CONTRACTOR's submittals
- D. Processing applications for payment
- E. Maintaining record documents
- F. Critical work sequencing
- G. Change Orders and A/E's Instruction Bulletins
- H. Use of premises, office and storage areas, security, housekeeping, and BISBEE's needs
- I. Major equipment deliveries and priorities
- J. CONTRACTOR's Safety Program

4.1.1.3 BISBEE's Representative will preside at the conference and will develop the agenda and arrange for keeping the minutes and distributing the minutes to all persons in attendance.

4.1.2 CONTRACTOR shall commence Work on or before the fourteenth (14th) day after the date set forth in the NTP, and shall complete all Work under the Contract within the established Contract Time. The NTP will be issued no later than thirty (30) calendar days after the Notice of Award unless otherwise agreed upon in writing, or as may be specified in the Supplementary Conditions.

4.2 SUBCONTRACTORS

- 4.2.1 Subcontracts shall be in accordance with, and CONTRACTOR shall be bound by, the following:
- 4.2.1.1 All subcontracts shall be subject to review and acceptance by BISBEE.
 - 4.2.1.2 All subcontracts shall be in writing and shall provide that all Work to be performed hereunder shall be performed in accordance with the terms of the Contract.
 - 4.2.1.3 True copies of any and all subcontracts shall be furnished to BISBEE; however, prices may be omitted.
 - 4.2.1.4 The subcontracting of any part of the Work will in no way relieve CONTRACTOR of his responsibility or liability or obligation under the Contract.
 - 4.2.1.5 All subcontracts and purchase orders for equipment shall state guaranteed delivery dates, at such times as determined by CONTRACTOR, which will allow CONTRACTOR to complete the Project within the Contract Time.
- 4.2.2 If BISBEE has reasonable objection to any proposed Subcontractor, CONTRACTOR shall submit a substitute to whom BISBEE has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued.
- 4.2.3 CONTRACTOR shall make no substitution for any Subcontractor, person or entity previously selected if BISBEE has reasonable objection to such substitution.

4.3 CONTRACTOR'S REPRESENTATIVE AND EMERGENCIES

- 4.3.1 CONTRACTOR shall at all times be present at the Site in person or represented by a competent superintendent who shall supervise and direct the Work and shall be authorized by CONTRACTOR to receive and fulfill instructions from BISBEE.
- 4.3.2 CONTRACTOR shall supervise and direct the Work. He shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall employ and maintain on the Site a qualified supervisor or superintendent who shall be designated in writing by CONTRACTOR as CONTRACTOR's representative at the Site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as if given to CONTRACTOR. The supervisor shall be present on the Site at all times as required to perform adequate supervision and coordination of the Work.
- 4.3.3 Emergencies that may arise during the progress of the Work may require special effort or require extra shifts to continue the Work beyond normal working hours. CONTRACTOR shall be prepared in case of such emergencies from whatever cause,

to do all necessary Work promptly.

4.4 CONTRACT DOCUMENTS

- 4.4.1 CONTRACTOR shall keep a copy of the Contract Documents at the Site and shall give BISBEE's Representative access thereto at all times.
- 4.4.2 The documents that make up the Contract Documents are intended to be complete and complementary, and to prescribe a complete Work which CONTRACTOR shall perform in a manner acceptable to BISBEE and in full compliance with the terms of the Contract. CONTRACTOR shall provide BISBEE with a complete and operable Work, even though the Plans and Specifications may not specifically call out all items or items of work required of CONTRACTOR to complete its task. If any omissions are made of information necessary to carry out the full intent and meaning of the Contract Documents, CONTRACTOR shall immediately notify BISBEE's Representative, who shall immediately notify A/E. A/E will make the necessary corrections for furnishing of detailed instructions. In case of discrepancies, the more stringent requirement shall govern.
- 4.4.3 Any drawings or Plans listed anywhere in the Contract Documents or Addenda thereto shall be regarded as a part thereof and of the Contract. Anything mentioned in the Specifications and not indicated on the Plans or not mentioned in these Specifications and indicated on the Plans shall be of the same force and effect as if indicated or mentioned in both.
- 4.4.4 CONTRACTOR shall perform the Work in accordance with the lines, grades, cross sections, dimensions, elevations and details indicated on the Plans and detailed drawings.
- 4.4.5 Unless otherwise specified, CONTRACTOR shall furnish all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and incidentals, including, but not limited to, dust and traffic control measures, and to perform all Work involved in executing the Contract in a satisfactory and workmanlike manner within the Contract Time.
- 4.4.6 Anything in the Contract Documents notwithstanding, CONTRACTOR accepts the responsibility of constructing a watertight, weather-tight, and totally functional Project.

4.5 ERRORS AND OMISSIONS

The Plans are presumed to be correct, but CONTRACTOR shall be required to check carefully all dimensions before beginning the Work. If any errors or omissions are discovered, BISBEE's Representative shall be so notified in writing. BISBEE's Representative shall immediately notify A/E who will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Plans and Specifications and shall issue appropriate A/E's Instruction Bulletins. Any such

adjustments made by CONTRACTOR without prior review and acceptance shall be at its own risk. The settlement of any complication or disputed expenses arising from such adjustment shall be made by CONTRACTOR at its own expense.

4.6 QUALIFICATIONS FOR EMPLOYMENT

4.6.1 No person under the age of sixteen (16) years for normal occupations, or under the age of eighteen (18) years in hazardous occupations, and no person currently serving a sentence in a penal or correctional institution, shall be employed to perform any Work under this Contract.

4.7 CHARACTER OF WORKERS

4.7.1 CONTRACTOR shall have in place and enforce a drug-free workplace policy which complies with the requirements of the Drug-Free Workplace Act.

4.7.2 CONTRACTOR shall at all times employ sufficient labor and equipment for prosecuting the classes of Work to full completion in the manner and time required by the Contract Documents.

4.7.3 All workers shall be competent with sufficient skill, knowledge and experience in their class of work and operation of equipment required to perform all Work properly and satisfactorily.

4.7.4 CONTRACTOR shall at all times enforce strict discipline and order among its workers and shall not permit use of alcohol or controlled substances (without a medical authorization) at the Site.

4.7.5 Any person employed by CONTRACTOR or any Subcontractor who, in the opinion of BISBEE's Representative does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of BISBEE be removed from the Work by CONTRACTOR or Subcontractor employing such persons, and shall not be employed again in any portion of the Work without the approval of BISBEE's Representative. CONTRACTOR or Subcontractor shall hold BISBEE harmless from damages or claims for compensation that may occur in the enforcement of this section.

4.7.6 Should CONTRACTOR or Subcontractor fail to remove such person as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, BISBEE may suspend the Work by written notice until such orders are complied with.

4.8 MAINTENANCE OF TRAFFIC

4.8.1 CONTRACTOR shall become familiar with and follow BISBEE's procedures when submitting traffic control plans for approval.

- 4.8.2 CONTRACTOR's operations shall be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), latest edition, and all applicable State, County and BISBEE requirements as applicable. BISBEE specific requirements include, but are not limited to:
- 4.8.2.1 Unless otherwise authorized in the Specifications or on a temporary basis by BISBEE, traffic shall be allowed to pass through the Work area.
 - 4.8.2.2 The Traffic Control Plan (TCP) shall be installed and maintained by personnel certified in the area of construction traffic control by either the American Traffic Safety Services Association (ATSSA) or the International Municipal Signals Association (IMSA).
 - 4.8.2.3 CONTRACTOR, in accordance with the TCP, shall furnish, erect, maintain, and replace as necessary, all traffic control devices and materials for the duration of the Project.
 - 4.8.2.4 CONTRACTOR shall notify BISBEE's Representative at least 48 hours in advance of implementing a change in the TCP that affects traffic to allow BISBEE sufficient time for public notification. CONTRACTOR shall maintain copies of the approved TCP on site and it must be available for review upon request by BISBEE's Representative.
 - 4.8.2.5 CONTRACTOR shall inspect all traffic control devices at least twice daily to assure that they are in compliance with the approved TCP and to ensure that they are in good condition. The traffic control setup and devices shall be inspected by CONTRACTOR at the start of each work day and again before the end of the day. This includes twice a day inspections during holidays, weekends and other non-working days, once between 5a.m. and 7a.m. and once again between 3p.m. and 5p.m. CONTRACTOR shall keep a log of all inspections and any corrective action taken, and the log shall be available for review upon request by BISBEE's Representative.
 - 4.8.2.6 Traffic control devices which, in the opinion of BISBEE's Representative are in poor condition, shall be removed and replaced with devices in acceptable condition at no additional cost to BISBEE.
 - 4.8.2.7 All barricades, vertical panels, tubular markers, sign stands, or other equipment as appropriate, shall be sand bagged upon initial installation or relocation and re-sand bagged as necessary or as directed by BISBEE's Representative.
 - A. Condition of sand bags - Sand bags shall be of good, tightly woven cloth and shall be filled to a minimum of 75% of their capacity with clean sand free from objectionable material such as rock or concrete pieces. Bags that are torn or sun rotted shall not be used and shall be removed from the project. The use of asphalt or concrete pieces in lieu of sand bags is prohibited at all times. Sand bags shall not be placed on the top of signs or barricades at any time.
 - B. Minimum sand bagging requirements - One (1) sand bag for vertical panels, type II barricades (suspended bag), small sign stands, tubular

markers, etc., and two (2) sand bags per unit for spring stands, type III barricades, large sign stands, etc. is. In any event or when so directed by the Engineer, CONTRACTOR shall provide additional sand bags for traffic control equipment.

- C. CONTRACTOR shall be prepared in advance of high wind events to respond immediately with additional sand bags for traffic control equipment.

4.8.3 CONTRACTOR shall furnish, erect, and maintain Variable Message Boards as shown on the plans or as directed by BISBEE's Representative to provide advance notification of construction. The boards, unless otherwise directed by BISBEE's Representative, shall be placed by CONTRACTOR seven (7) days prior to starting construction operations and shall only remain in place until the start of construction, at which time CONTRACTOR shall remove the boards.

4.8.4 CONTRACTOR shall coordinate with various agencies to include governmental, commercial and public, so that adequate services are maintained and the agencies are aware of all restrictions to traffic flows due to the construction operations. Agencies include, but are not limited to, BISBEE Police Department, Fire Department, Public Works Department, the Bisbee County Sheriff's Office, Rural Metro, Bisbee County Area Transit (YCAT) and affected school districts and utility companies.

4.8.5 CONTRACTOR's operations shall cause no unnecessary inconvenience to the public and public access rights shall be considered at all times. Safe and adequate pedestrian and vehicular access shall be provided and maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, motels, hospitals, fire stations, police stations, residential properties and similar establishments. Unless otherwise included as a pay item in the bid schedule, public convenience requirements will be considered incidental to completion of the project, and no direct payment will be made for this work.

4.8.5.1 All public vehicle and pedestrian traffic, unless otherwise approved by the Engineer, must be allowed to pass through or around CONTRACTOR's work sites with a minimum of delay. A safe route shall be provided and clearly indicated at all times for pedestrians travel.

4.8.5.2 CONTRACTOR shall coordinate directly with adjacent property owners, residents and businesses for access to their properties. CONTRACTOR shall maintain at least one access at all times during construction for adjacent properties with two driveways. CONTRACTOR shall provide temporary access to adjacent properties with one driveway and re-establish access at the end of each workday.

4.8.5.3 CONTRACTOR shall not store materials or equipment in locations that will interfere with the safe movement of either vehicle or pedestrian traffic. At the end of each working day and at the other times when the work is suspended for any reason, CONTRACTOR shall remove all debris, equipment, materials and other obstructions.

- 4.8.6 Grading operations, roadway excavation and fill construction shall be conducted and maintained in such a manner as to provide a reasonably satisfactory and safe surface for vehicular and pedestrian traffic. When rough grading is completed, the roadbed shall be brought to and maintained in a reasonably smooth condition, satisfactory and safe for vehicular traffic at the posted speed limit. Pedestrian walkways shall be provided and maintained in a like manner. CONTRACTOR shall accomplish any additional grading operations and/or repairs, including barricade replacement or repairs during working and non-working periods which, in the opinion of BISBEE's Representative, are required.
- 4.8.7 Shoulders used as a temporary bypass are to be graded a minimum of once a day and watered to control dust. CONTRACTOR, at no additional cost to BISBEE, is responsible for repairing any damage to pavement edges or surfaces caused by bypass routing. CONTRACTOR shall provide an asphalt paved surface for any temporary bypass route in place longer than ten (10) calendar days.
- 4.8.8 In the event of abnormal weather conditions, such as windstorms and rainstorms, CONTRACTOR shall immediately inspect its Work area and take all necessary actions to insure that public access and safety are maintained.
- 4.8.9 CONTRACTOR shall provide the emergency phone number of its representative to BISBEE's Representative. CONTRACTOR's representative shall be available for contact 24 hours per day, seven (7) days per week.

4.9 CLEANUP AND DUST CONTROL

- 4.9.1 Throughout all phases of construction, including suspension of Work, and until final acceptance of the Project, CONTRACTOR shall keep the Work area clean and free from rubbish, excess material and debris generated by construction activities.
- 4.9.2 CONTRACTOR shall take whatever steps, procedures or means required to prevent any dust nuisance due to its construction operations. The dust control measures shall be maintained at all times to the satisfaction of BISBEE's Representative and in accordance with the requirements of Arizona Department of Environmental Quality rules and regulations.
- 4.9.3 If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of BISBEE, CONTRACTOR shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, CONTRACTOR shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site ready for occupancy.
- 4.9.4 Failure of CONTRACTOR to comply with BISBEE's Representative's written cleanup

orders may result in an order to suspend Work until the condition is corrected. No additional compensation or time will be allowed as a result of such suspension and BISBEE's Representative has the authority to take such other measures as may be necessary to remedy the situation.

4.10 SANITATION

- 4.10.1 CONTRACTOR shall provide suitable and adequate sanitary conveniences for the use of all persons employed on the Project. All sanitary conveniences shall conform to the regulations of the public authority having jurisdiction over such matters. At the completion of the Project, all such sanitary conveniences shall be removed, and the premises left in a sanitary condition.
- 4.10.2 CONTRACTOR shall cooperate with and follow directions of the Arizona Department of Public Health Services and Cochise County with respect to sanitation facilities. State and County Public Health Service representatives shall have access to the Work wherever it is in preparation or progress, and CONTRACTOR shall provide proper facilities for such access and inspection.

4.11 WATER

- 4.11.1 CONTRACTOR and each Subcontractor shall supply adequate drinking water with individual drinking cups for the use of employees on this construction. The quality of drinking water shall meet all applicable federal, state and local standards for drinking water.
- 4.11.2 It shall be the responsibility of CONTRACTOR to provide and maintain, at its own expense, an adequate supply of water for its use for construction and to install and maintain necessary supply connections and piping for same. Before final acceptance of the completed Project, all temporary connections and piping installed by CONTRACTOR shall be removed.
- 4.11.3 CONTRACTOR shall apply for a fire hydrant meter and pay for all construction water used at the current rates charged by BISBEE, if CONTRACTOR desires to obtain water from the distribution system at any point. If CONTRACTOR takes a fire hydrant out of service, CONTRACTOR shall notify BISBEE Utilities Department no less than 24 hours in advance and shall mark the hydrant as being 'Out of Service' as required by BISBEE. CONTRACTOR shall verify with BISBEE Utilities Department all requirements for the use of fire hydrant water.

4.12 CONSTRUCTION STAKING

- 4.12.1 Construction staking will be made by CONTRACTOR in accordance with the technical requirements of Section 105.8 of the MAG Specifications unless otherwise provided in the Supplementary conditions. CONTRACTOR shall provide and pay for all facility layout staking, including elevations and all other Project staking.

4.12.2 Replacement of construction stakes that have been knocked out due to CONTRACTOR's Work or lack of Work, weather conditions, traffic, vandalism or utilities will be done at CONTRACTOR's expense.

4.13 ARIZONA 811

CONTRACTOR is required to notify Arizona 811 (1-800-782-5348) prior to the excavation of any material in accordance with A.R.S. § 40-360.22. CONTRACTOR shall directly contact BISBEE for marking of BISBEE owned streetlight, traffic signal, communication, water, wastewater, and sprinkler and irrigation facilities.

4.14 UTILITIES SHOWN ON THE PLANS

4.14.1 Regardless of what utilities are shown on the Plans, it shall be CONTRACTOR's responsibility to verify these locations and any additional lines which may exist through consulting with BISBEE, utility companies and/or "Arizona 811".

4.14.2 Existing utilities are indicated on Project Plans in accordance with the best information available. CONTRACTOR shall notify all owners of utilities when its Work is in progress. If a utility is damaged, CONTRACTOR shall make such arrangements as are necessary to make emergency repairs, in a manner satisfactory to BISBEE and the utility owner.

4.14.3 If a utility is shown on the Project Plans and cannot be located by CONTRACTOR, any Work in conflict with the utility shall be delayed until the location of the utility is confirmed by BISBEE. Costs associated with such delay will be borne by CONTRACTOR.

4.14.4 No extra compensation will be made for the repair of any individual or house service utility or utility lines damaged by CONTRACTOR's labor forces or equipment, nor for any damage incurred through neglect or failure to provide protective barriers, lights and other devices or means required to protect such existing utilities.

4.14.5 CONTRACTOR shall expose all sanitary and storm sewers, water, gas, electric, telephone utility lines, and other underground structures that might interfere with the Work, in order to permit survey location prior to construction.

4.14.6 CONTRACTOR shall assume full responsibility for damages to any underground facility/utility properly shown on the Plans or properly located by the Utility Owner, as a result of failing to obtain information as to its location, failing to excavate in a careful and prudent manner (as defined in MAG Specs), or failing to take measures to protect the facilities/utilities. CONTRACTOR is liable to the Utility Owner for the total cost of the repair to the underground facility/utility.

4.15 UTILITIES NOT SHOWN ON THE PLANS

- 4.15.1 If utility lines are encountered which are not shown on the Plans, and not located, or incorrectly located by the Utility Owner, other than individual or house service utility lines, and these lines are damaged or work is required to clear same, then MAG Spec Section 109.8 and A.R.S. § 40-360 shall apply.
- 4.15.2 The work necessary for the raising, lowering, or relocating of any such utility shall be at the Utility Owner's expense. The necessary Work may be done by the Utility Owner or by CONTRACTOR, or as a collaborative effort, at the option of the Utility Owner. All Work shall be in accordance with the standards of BISBEE and the Utility Owner.
- 4.15.3 In most cases, individual or house service utility lines are not shown on the Plans. It shall be CONTRACTOR's responsibility to locate and protect these individual or house services. If, due to CONTRACTOR's operations, any of these lines are damaged, CONTRACTOR shall repair or replace these lines in a manner satisfactory to the owner of the utility at no extra cost to BISBEE. In addition, the cost of location, protection, and working around these individual or house service utility lines shall be included in CONTRACTOR's cost for the Work under this Contract.

4.16 DRIVEWAYS AND WALKS

- 4.16.1 Inconvenience caused by digging across driveways and sidewalks shall be kept to a minimum by restoring the serviceability of the drive or sidewalk as soon as possible. Before blocking driveways, CONTRACTOR shall notify the property owner. CONTRACTOR shall replace or repair any damage done to driveways and walks to not less than the condition existing prior to CONTRACTOR's Work. If it is necessary to leave an excavation open across driveways or sidewalks, CONTRACTOR shall provide temporary relief in the form of steel plates over the excavation.
- 4.16.2 Temporary paving replacement in front of business establishments shall be placed immediately following backfill and shall remain in place until the condition of the backfill is suitable for permanent pavement replacement.
- 4.16.3 Direct access shall be provided at all times to fire stations, fire hydrants, hospitals, police stations, and at all other agencies or services where emergencies may require immediate access to same.
- 4.16.4 For any facility with two or more driveways CONTRACTOR shall coordinate with the owner of the facility to maintain access at all times during construction via at least one driveway.

4.17 TREES AND SHRUBBERY

- 4.17.1 All trees and shrubbery within the right-of-way or easements shall be protected by CONTRACTOR insofar as practicable. No trees or shrubbery shall be removed without prior approval of BISBEE.

4.17.2 In the event shrubbery or trees must be trimmed or removed, CONTRACTOR shall notify the property owner to do so within a reasonable time prior to construction. All shrubbery or trees not removed by the property owner shall be trimmed or removed by CONTRACTOR and hauled from the job at CONTRACTOR's expense.

4.17.3 All trees, shrubs, hedges or brush designated on the Plans, or by BISBEE's Representative for removal, shall be completely removed and disposed of as indicated on the Plans or as specified.

4.18 IRRIGATION DITCHES AND STRUCTURES

CONTRACTOR shall contact the owner of any ditches, irrigation lines, and appurtenances which interfere with the Work and shall make arrangements for dry-up or scheduling of water deliveries. CONTRACTOR shall be liable for any damage to irrigation facilities due to its operations and shall repair such damaged facilities to an "equal or better than" original condition.

4.19 ROADS AND FENCES

4.19.1 Streets/roads subjected to interference by the prosecution of this Work shall be kept open in compliance with Section 4.8 and shall be maintained by CONTRACTOR until the Work is completed.

4.19.2 All fences located in easements, when damaged or temporarily removed, shall be restored to a condition equal to or better than the original condition. Such fences shall be restored at CONTRACTOR's expense.

4.20 PROTECTION OF WORK AND CLEANING UP

4.20.1 CONTRACTOR shall be responsible for the protection of all Work until its completion and final acceptance, and he shall at his own expense, replace damaged or lost material, or repair damaged parts of the Work, and CONTRACTOR and his Sureties shall be liable therefore.

4.20.2 CONTRACTOR shall remove from the vicinity of the completed Work all plant, surplus material or equipment belonging to him or used under its direction during construction. All surplus excavated material, concrete, plaster and debris of all kinds shall be removed from BISBEE's premises, streets or portions of building or property at or adjacent to the site of the Work excepting that select material which may be required for refilling or grading the surface. Salvage material shall be stored at areas designated by BISBEE's Representative. Where an area is indicated to be "cleared", all the weeds, vegetation, shrubs and trees shall be removed unless they are specifically noted to not be removed.

4.20.3 In the event of abnormal weather conditions, such as windstorms and rainstorms, CONTRACTOR shall immediately inspect its Work area and take all necessary actions to insure that the project Site is protected and maintained.

4.21 METHODS AND EQUIPMENT

- 4.21.1 The methods and equipment adopted by CONTRACTOR shall be such as will secure a satisfactory quality of Work and will enable CONTRACTOR to complete the Work in the time agreed upon. The selection and use of these methods and equipment is the responsibility of CONTRACTOR.
- 4.21.2 When the Specifications state the construction shall be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by A/E. If CONTRACTOR desires to use a method or type of equipment other than those specified, CONTRACTOR may make that request to BISBEE's Representative, who shall immediately forward the request to A/E. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that CONTRACTOR will be fully responsible for producing construction work in conformity with the Specifications. If, after trial use of the substituted methods or equipment, A/E determines that the Work produced does not meet the Specifications, CONTRACTOR shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods, equipment and quality, or take such other corrective action as A/E may direct. No change will be made in basis of payment of the construction items involved nor in Contract Time as result of authorizing a change in methods or equipment under these provisions. CONTRACTOR may appeal a decision of A/E under this Section to BISBEE's Representative. Any such appeal must be made in writing within forty-eight (48) hours of A/E's decision or the right to appeal is waived.

4.22 SUSPENSION OF WORK

In case of suspension of Work from any cause whatever, CONTRACTOR shall be responsible for the protection of all Materials and equipment. CONTRACTOR shall provide suitable drainage and erect temporary structures where necessary to protect the Materials and equipment.

4.23 DELAYS AND EXTENSION OF TIME

- 4.23.1 If CONTRACTOR finds it cannot, for reasons beyond its control, complete the Work within the Contract Time as specified or as extended, he shall immediately submit a written request to BISBEE's Representative for an extension of time, and when justified, related overhead and expenses, setting forth therein the reasons that CONTRACTOR believes will justify the granting of its request. Delay will only be granted if it affects the critical path of the accepted baseline schedule. CONTRACTOR's plea that insufficient time was specified is not a valid reason for extension of time. If BISBEE's Representative finds that the Work was delayed because of conditions beyond the control and through no fault of CONTRACTOR, BISBEE may extend the Contract Time in such amount as the conditions justify. The extended Contract Time shall then be in full force and effect

the same as though it were the original Contract Time. However, if the delay was caused by BISBEE, was unreasonable under the circumstances and was not within the contemplation of the Parties, then CONTRACTOR and BISBEE shall enter into negotiations for recovery of damages directly related to the delay.

- 4.23.2 In setting the Contract Time, it has been assumed that up to seven (7) days may be lost as a result of weather conditions which will slow down the normal progress of Work; therefore, no extensions in Contract Time will be allowed for the first seven (7) days lost due to bad weather conditions.
- 4.23.3 To receive consideration, a request for extension of time must be made in writing to BISBEE's Representative stating the reason for said request, and such request must be received by BISBEE's Representative within 48-hours following the end of the delay-causing condition.
- 4.23.4 BISBEE's Representative shall ascertain the facts and extent of the delay, and its findings of the facts thereon shall be final and conclusive.
- 4.23.5 An extension of time may only be granted by BISBEE after the expiration of the time originally fixed in the Contract or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration. Any extension of time shall not release the sureties upon any bond required under the Contract.
- 4.23.6 BISBEE's or A/E's liability for delay from any cause shall be limited to granting a time extension and related overhead and expenses to CONTRACTOR, and there is no other obligation, expressed or implied, on the part of BISBEE or A/E to CONTRACTOR for delay from any cause. An extension of Contract Time shall not release the sureties of their obligations, which shall remain in full force until the discharge of the Contract.

4.24 BISBEE'S RIGHT TO CARRY OUT THE WORK

If CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within fourteen (14) days after receipt of written notice from BISBEE to commence and continue correction of such default or neglect with diligence and promptness, BISBEE may without prejudice to any other remedy BISBEE may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due CONTRACTOR the cost of correcting such deficiencies, including compensation for A/E's additional services made necessary by such default, neglect or failure. If the payment then or thereafter due CONTRACTOR is not sufficient to cover such amount, CONTRACTOR shall pay the difference to BISBEE.

4.25 TERMINATION FOR BREACH OF CONTRACT

- 4.25.1 If CONTRACTOR refuses or fails to prosecute the Work or any separable part thereof

in accordance with the Plans and Specifications or with such diligence as will ensure the Work's completion within the time specified herein, or an extension thereof, or fails to complete such Work within time, or if CONTRACTOR or any of its Subcontractor(s) should violate any of the provisions of the Contract, BISBEE may terminate this Contract.

4.25.2 In the event of any such termination, BISBEE shall immediately serve written notice thereof upon the Surety and CONTRACTOR, and the Surety shall have the right to take over and perform the Contract; provided however, that if the Surety within 21 days after the serving upon it of a notice of termination does not give BISBEE written notice of its intention to take over and perform the Contract and does not commence performance thereof within 30 days from the date of serving said notice, BISBEE may take over the Work and prosecute the same to completion by Contract or by any other method BISBEE may deem advisable. BISBEE may, without liability for so doing, take possession of and utilize in completing the Work such Materials, appliances, plants, equipment and other property belonging to CONTRACTOR that may be on the site of the Work and be necessary therefore. Regardless of any claims in connection with any termination of this Contract, BISBEE's right to take possession and utilize Materials, appliances, plants, equipment and other property belonging to CONTRACTOR shall be absolute and BISBEE shall be entitled to seek an immediate injunction to enforce the provisions of this paragraph. For any portion of such Work that BISBEE elects to complete by furnishing employees, Materials, tools and equipment, BISBEE shall be compensated for such in accordance with the schedule of compensation for force account work in the section on payment for changes in the Work.

4.25.3 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to BISBEE.

4.25.4 CONTRACTOR may terminate the Contract if through no act or fault of CONTRACTOR or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with CONTRACTOR, for any of the following reasons:

4.25.4.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

4.25.4.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or

4.25.4.3 Because BISBEE has not issued payment or has not notified CONTRACTOR of the reason for withholding payment as provided for in the Contract.

4.25.5 For any one of the reasons described in Section 4.25.4 above, CONTRACTOR may terminate the contract upon fourteen (14) days' written notice to BISBEE, and recover from BISBEE payment for Work completed, unless BISBEE cures the reason for CONTRACTOR's notice of termination within the fourteen (14) day period.

**PART V
GENERAL CONDITIONS**

CONTROL OF WORK

5.1 TIME OF WORK

5.1.1 Initial Construction Schedule

- 5.1.1.1 Prior to the pre-construction meeting, CONTRACTOR shall furnish to BISBEE's Representative one (1) hard copy and one (1) copy in electronic format of an Initial Construction Schedule.
- 5.1.1.2 The Initial Construction Schedule shall be based on and incorporate the Contract Milestone and Completion Dates specified in the Contract Documents.
- 5.1.1.3 The Initial Construction Schedule shall indicate the detailed plan for the work to be completed in the first 90 calendar days of the Contract; details of planned mobilization of plant and equipment; sequence of early operations; and procurement of materials and equipment. Work beyond 90 calendar days may be shown in summary form.
- 5.1.1.4 The Initial Construction Schedule shall be a time scaled, Critical Path Method (CPM) type schedule.
- 5.1.1.5 CONTRACTOR may choose to cost-load the CPM schedule as a basis for planning estimated monthly progress payments, or, the bid schedule used for establishing the Contract Sum will be used as the basis for monthly progress payments in-lieu of cost-loading.
- 5.1.1.6 Overall time of completion, and time of completion for each milestone shown on the Initial Construction Schedule, shall adhere to the times in the Contract Documents, unless an earlier (advanced) initial time of completion is requested by CONTRACTOR and agreed to by BISBEE's Representative. Any such agreement shall be formalized by a Change Order.
- 5.1.1.7 BISBEE's Representative will review the Initial Construction Schedule for conformance with the requirements of the Contract Documents. BISBEE's Representative will return the Initial Construction Schedule with comments within seven (7) days after receiving it from CONTRACTOR.

5.1.2 Construction Schedule Development

- 5.1.2.1 Within 14 days after receiving the Notice to Proceed, CONTRACTOR shall submit a detailed proposed Construction Schedule presenting an orderly and realistic plan for completion of the Work, in conformance with the requirements of the Contract Documents.
- 5.1.2.2 The proposed Construction Schedule shall furnish or comply with the following requirements:

- A. A time scaled, Critical Path Method type schedule with the critical path clearly identified.
- B. No individual activity on the schedule shall have a duration longer than fourteen (14) calendar days if the Project is a horizontal project (road, sewer, water improvements), with the exception of fabrication and procurement activities, unless otherwise approved by BISBEE's Representative. Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity. No weather extensions will be allowed for days not shown as work days on the schedule.
- C. Procurement of major equipment, through receipt and inspection at the site, identified as a separate activity.
- D. BISBEE furnished Materials and equipment if any, identified as separate activities.
- E. Dependencies (or relationships) between activities.
- F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or Material delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.
- G. The total cost of performing each activity. This cost shall be the total of labor, Material, equipment, including overhead and profit. The sum of the cost for activities shall equal the total contract value.
- H. Thirty (30) calendar days for developing punch list(s), completion of punch list items, and final cleanup for the Work or any designated portion thereof. No other critical activities shall be scheduled during this period.
- I. Interface with the Work of other contractors (or entities).

5.1.2.3 CONTRACTOR shall submit the Construction Schedule to BISBEE's Representative.

5.1.2.4 BISBEE's Representative will review the proposed Construction Schedule for conformance with the requirements of the Contract Documents. Within seven (7) days after receipt, BISBEE's Representative will accept the Construction Schedule or will return it with comments. If the proposed Construction Schedule is not accepted, Contractor shall revise the schedule to incorporate comments and resubmit the schedule for acceptance within seven (7) days after receiving it. The accepted schedule shall become the Contract Schedule. If the accepted schedule indicates the project will be completed earlier than the contract completion date, the float time generated belongs to BISBEE. BISBEE may require CONTRACTOR to perform additional scope of work during the float time with no additional General Conditions to CONTRACTOR.

5.1.2.5 The Contract Schedule shall be the basis for evaluating job progress,

payment requests, and time extension requests. The responsibility for developing the Contract Schedule and monitoring actual progress as compared to the schedule rests with CONTRACTOR.

5.1.2.6 Failure of the Contract Schedule to include any element of the Work or any inaccuracy in the Contract Schedule will not relieve CONTRACTOR from responsibility for accomplishing all the Work in accordance with the Contract.

5.1.2.7 Acceptance of the Contract Schedule will not relieve CONTRACTOR of the responsibility for accomplishing the Work in accordance with the Contract.

5.1.3 Monthly Updates

5.1.3.1 Each month, CONTRACTOR shall submit to BISBEE's Representative an up-to-date status report of the work. The status report shall include:

- A. Monthly Cash Flow projected through the end of the project with the baseline projected cash flow remaining unchanged for the duration of the project and actual cash flow updated on a monthly basis.
- B. CONTRACTOR's estimated percentage complete for each activity not yet complete.
- C. Actual start/finish dates for activities as appropriate.
- D. Identification of processing errors, if any, on the previous update reports.
- E. Revisions, if any, to assumed activity durations including revisions for weather impact for any activities due to the effect of the previous schedule update.
- F. Identification of activities that are affected by proposed Change Orders issued during the update period.
- G. Resolution of conflict between actual work progress and schedule logic. When out of sequence activities develop in the Contract Schedule because of actual construction progress, CONTRACTOR shall submit revision to schedule logic to conform to current status and direction.
- H. Anticipated Work during the next reporting period.
- I. Work accomplished during the current reporting period.
- J. Identify problems and potential solutions.

5.1.3.2 BISBEE's Representative will review the updated information and meet with CONTRACTOR each week at the Project Site to determine the status of the Work. If agreement cannot be reached on any issue, CONTRACTOR will use BISBEE Representative's determination in the processing of the update.

5.1.3.3 CONTRACTOR will incorporate BISBEE Representative's comments and submit an updated report.

5.1.3.4 Progress payments pursuant to the Contract will be based on the Contract Schedule update.

5.1.4 Schedule Revisions

5.1.4.1 If the sequence of construction differs significantly from the Contract Schedule, as determined by BISBEE's Representative, CONTRACTOR shall submit a revised schedule to BISBEE's Representative within seven (7) days for acceptance.

5.1.4.2 When a proposed Change Order is issued which has the potential to impact specified completion dates, the Change Order request shall include a description of the impact of such changes. If approved, it shall be incorporated into the Contract Schedule. Time extensions will be considered only to the extent there is insufficient remaining float to accommodate these changes, and pursuant to Section 6 of the Contract Documents.

5.1.4.3 Should CONTRACTOR, after acceptance of the Contract Schedule, intend to change its plan of construction, it shall submit its requested revisions to BISBEE's Representative, along with a written statement of the revision, including a description of the logic for rescheduling the work, methods of maintaining adherence to intermediate milestones and other specific dates and the reasons for the revisions. If the requested changes are acceptable to BISBEE's Representative they will be incorporated into the Contract Schedule in the next reporting period.

5.1.4.4 Schedule revisions shall be submitted at least seven (7) days prior to the date of submission of update information. BISBEE's Representative will have seven (7) days to review the revisions.

5.1.5 Contract Schedule Reports

CONTRACTOR shall submit the following reports for the proposed Contract Schedule, Contract Schedule monthly updates, Contract Schedule revisions and recovery schedules:

5.1.5.1 CPM Schedule Report listing the activities, their early/late and actual start finish dates, duration, float and the logic relationship of activities sorted by early start.

5.1.5.2 A cost report showing percentage of work accomplished, previous payments received, amount earned for the current update period, and the earned value to date.

5.1.5.3 A narrative report with the updated progress analysis, which shall include a description of challenges encountered, current and anticipated delaying factors and their impact, an explanation of corrective action taken and proposed revisions for recovery. Narrative report on proposed Contract Schedule will outline CONTRACTOR's overall plan, strategy,

crew movement and utilization, and other considerations in developing the schedule.

5.1.6 Short Interval Schedules

CONTRACTOR shall prepare Short Interval Schedules (SIS) throughout the duration of Work. The SIS shall include all current activities and projected activities for the succeeding three (3) weeks as required by BISBEE's Representative. The SIS shall include actual start/finish dates for the preceding one (1) week. Copies of the SIS shall be submitted to BISBEE's Representative at the weekly construction progress meeting. CONTRACTOR shall participate in SIS coordination during the weekly construction meetings.

5.1.7 Time of Essence

Time is of the essence for this Contract. CONTRACTOR shall, to the fullest extent possible, carry on the various classes or parts of the Work concurrently, and shall not defer construction of any portion of the Work in favor of any other portion of the Work, without the express approval of BISBEE's Representative.

5.1.8 Date of Completion

CONTRACTOR shall fully and satisfactorily complete the Work within the Contract Time. The date of completion is defined in Section 9.2.

5.1.9 Responsibility for Completion

5.1.9.1 CONTRACTOR shall furnish sufficient manpower, materials, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Saturdays, Sundays and holidays as may be necessary to insure the prosecution and completion of the Work in accordance with the accepted Contract Schedule. If work on the critical path is seven (7) days or more behind the currently updated Contract Schedule and it becomes apparent that the Work will not be completed within the Contract Time, CONTRACTOR will implement whatever steps it deems necessary to make up all lost time. If CONTRACTOR's solution is not successful, it will make further attempts using the following sequence of events:

- A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.
- B. If the above cannot be achieved then:
 - i. CONTRACTOR shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of BISBEE's Representative, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate, in the judgment of BISBEE's Representative, the backlog of work.

- ii. In addition, BISBEE's Representative may require CONTRACTOR to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the Work within the Contract Time. If BISBEE's Representative finds the proposed recovery schedule unacceptable, it may require CONTRACTOR to submit a new plan. If the actions taken by CONTRACTOR or the second plan proposed are unsatisfactory, BISBEE's Representative may require CONTRACTOR to take any of the actions set forth in the previous Paragraph without additional cost to BISBEE to make up the lag in scheduled progress.

5.1.9.2 Failure of CONTRACTOR to comply with the requirements of this Section 5.1.9 shall be considered grounds for a determination by BISBEE that CONTRACTOR is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

5.1.10 Daily Reports

CONTRACTOR shall submit a Daily Activity Report for each workday, including weekends and holidays when worked, including manpower and equipment activity, to BISBEE's Representative.

5.1.11 Payments Withheld

Progress Payments may be withheld in whole or in part should CONTRACTOR fail to comply with the requirements of this Section 5.1.

5.2 **A/E TO INTERPRET CONTRACT DOCUMENTS**

A/E will decide all questions which may arise as to the interpretation of the Plans and Specifications. CONTRACTOR may appeal a decision of A/E made pursuant to this paragraph to BISBEE's Representative. Such appeal must be made in writing within 48-hours of A/E's decision or the right to appeal is waived.

5.3 **FORMAL PROTEST**

- 5.3.1 If CONTRACTOR considers any Work demanded of it to be outside the requirements of the Contract, or if CONTRACTOR considers any instruction, ruling, or decision of BISBEE's Representative or A/E to be unfair, CONTRACTOR shall, within 48-hours after any such demand is made, or instruction, ruling or decision is given, file a written protest stating clearly and in detail its objections and the reasons therefore. Except for such protests as are made of record in the manner and within the time above stated, CONTRACTOR shall be deemed to have waived and does hereby waive all claims for extra Work, damages and extensions of time resulting from demands, instructions, rulings and decisions of BISBEE's Representative or A/E. If the protest is against a demand, instruction, ruling or decision of A/E, it shall be filed with BISBEE's

Representative. If the protest is against a demand, instruction, ruling or decision of BISBEE's Representative, it shall be filed with BISBEE's Engineer.

- 5.3.2 Upon receipt of a protest from CONTRACTOR of a decision of A/E, BISBEE's Representative shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of BISBEE's final decision, which shall be binding.
- 5.3.3 CONTRACTOR shall continue work on the Project during the review of the formal protest.

5.4 PLANS

- 5.4.1 The Contract Plans consist of general drawings and details. These indicate such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the Contract Plans shall be in writing. The Contract Plans shall be supplemented by such working or shop drawings prepared by CONTRACTOR as are necessary to adequately control the Work. No change shall be made by CONTRACTOR in any working or shop drawing after it has been accepted by A/E.
- 5.4.2 CONTRACTOR shall keep a current copy of the Plans and Specifications at the jobsite, and shall at all times give BISBEE's Representative access thereto. A current copy of Plans and Specifications shall include red-line drawings, all Addenda, Change Orders, A/E Instruction Bulletins, and any other approved change made to the Plans and Specifications. Any drawings or Plans listed in the Specifications shall be regarded as a part thereof and BISBEE's Representative will furnish from time to time such additional drawings, Plans, profiles, and information as they may consider necessary for CONTRACTOR's guidance.
- 5.4.3 All authorized alterations affecting the requirements and information given on the accepted Plans shall be in writing. No changes shall be made of any plan or drawing after the same has been accepted by A/E except by consent of A/E in writing.

5.5 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS

Finished Work in all cases shall conform to lines, grades, cross sections, and dimensions shown on the accepted Plans. Allowable deviations, other than specified tolerances, from the accepted Plans and working drawings will in all cases be determined by BISBEE's Representative.

5.6 COORDINATION AND INTERPRETATION OF PLANS AND SPECIFICATIONS

- 5.6.1 The documents which make up the Contract Documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all.

They are intended to be coordinated and to describe and provide for a complete Work.

- 5.6.2 Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in these Contract Documents, CONTRACTOR shall promptly notify BISBEE's Representative, who shall follow the procedures set forth in Section 4.5.1. In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct.
- 5.6.3 In the event of there being a conflict between one Contract Document and any of the other Contract Documents, the more stringent requirement shall apply.
- 5.6.4 CONTRACTOR shall not take advantage of any apparent error or omission in the Plans or Specifications. In the event CONTRACTOR discovers such an error or omission, it shall immediately notify BISBEE's Representative, who shall notify A/E. BISBEE's Representative and A/E shall proceed as prescribed in Section 4.5.1 of the Contract Documents.

5.7 ORDER OF WORK

- 5.7.1 When required by the Contract Documents, CONTRACTOR shall follow the sequence of operations as set forth therein. Full compensation for conforming to such requirements will be considered as included in the prices paid for Contract items of Work and no additional compensation will be allowed.
- 5.7.2 The organization of the Specifications into divisions and articles and the arrangement of drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

5.8 COOPERATION BETWEEN CONTRACTORS

- 5.8.1 BISBEE reserves the right to Contract for and perform other or additional Work on or near the Work covered by the Contract.
- 5.8.2 When separate contracts are let within the limits of any one Project, each contractor shall conduct its work so as not to interfere with or hinder the progress or completion of the Work being performed by other contractors. Contractors working on the same Project shall cooperate with each other as directed.
- 5.8.3 CONTRACTOR involved shall assume all liability, financial or otherwise, in connection with its Contract and shall protect and save harmless BISBEE from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by CONTRACTOR because of the presence and operations of other contractors working within the limits of the same Project.
- 5.8.4 CONTRACTOR shall arrange the Work and shall place and dispose of the Materials being used so as not to interfere with the operations of the other contractors within the

limits of the same Project. CONTRACTOR shall join its Work with that of others in an acceptable manner and shall perform it in proper sequence to that of the others.

- 5.8.5 If BISBEE elects to perform work at the worksite directly or by separate contractors other than CONTRACTOR, the Parties shall coordinate the activities of all forces at the worksite and agree upon fair and reasonable schedules and operational procedures for worksite activities. BISBEE shall require each separate contractor to cooperate with CONTRACTOR and assist with the coordination of activities and the review of construction schedules and operations. The Date of Substantial Completion or the Date of Final Completion may be equitably adjusted in accordance with this Contract, for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

5.9 TESTING AND INSPECTION

- 5.9.1 CONTRACTOR shall obtain an independent laboratory or testing company and pay all costs of quality control testing required by the Contract documents, including testing required by MAG, the Technical Specifications, BISBEE, and other jurisdictional bodies. A copy of all test results shall be furnished to BISBEE's Representative in a Weekly Summary Report submitted at the weekly construction progress meeting for tests performed from the preceding week. At substantial completion, CONTRACTOR shall submit a final test report containing all test results which certifies the Work complies with the Specifications. This report shall be sealed by the individual registered in the State of Arizona who was responsible for overseeing the testing and sampling.
- 5.9.2 CONTRACTOR shall furnish BISBEE's Representative with every reasonable facility for ascertaining whether the Work as performed is in accordance with the requirements and intent of the Specifications and Contract. BISBEE's Representative shall be permitted to inspect all Materials and each part or detail of the Work at any time for the purpose of expediting and facilitating the progress of the Work. BISBEE's Representative shall be furnished with such information and assistance by CONTRACTOR as required to conduct a complete and detailed inspection. Should any Work be covered up before acceptance or consent of BISBEE's representative, it must, if required by BISBEE's Representative, be uncovered for examination at CONTRACTOR's expense. The direct control shall be solely the responsibility of CONTRACTOR's foremen and superintendent.
- 5.9.3 When the United States government is to pay a portion of the cost of the Work covered by the Contract, the Work shall be subject to the inspection of the representatives of the U.S. government. Such inspection shall in no sense make the U.S. government a party to this Contract and will in no way interfere with the rights of either Party under this Contract.
- 5.9.4 The inspection of the Work shall not relieve CONTRACTOR of any of its obligations to fulfill the Contract as herein provided. Any unsuitable or defective Materials and Work may be rejected notwithstanding that such Work and Materials may have been

previously overlooked and accepted or estimated for payment. Unsuitable or defective Materials shall be removed from the site within three (3) days of such rejection.

5.10 LINES AND GRADES

Profiles and elevations are indicated on the Plans. All Work under this Contract shall be built in accordance with the lines and grades indicated on the Plans. These lines and grades may be modified as provided in Part VI (Changes in the Work) in the Contract. The establishment of the lines and grades shall be set forth under these General Conditions, as modified by the Supplementary conditions. CONTRACTOR shall verify all vertical and horizontal controls using the nearest benchmark.

5.11 USE OF SITE

5.11.1 CONTRACTOR shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the Site with any Materials or equipment.

5.11.2 CONTRACTOR shall coordinate all of the Contract's operations with, and secure approval from, BISBEE's Representative before using any portion of the Site.

5.12 STORMWATER POLLUTION PREVENTION

5.12.1 CONTRACTOR shall be responsible for compliance with the provisions of BISBEE's Stormwater Pollution Prevention Program and MS4 Permit, and under direction of the Engineer shall take all necessary actions to prevent discharges of polluted water from entering adjacent roadways, catch basins and storm sewers from the work-affected area whether such discharges result from construction-related activities or stormwater runoff. The Work shall include, but may not be limited to, the following provisions:

5.12.1.1 CONTRACTOR shall prepare and submit the Notice of Intent (NOI) and the Notice of Termination (NOT) to ADEQ.

5.12.1.2 CONTRACTOR shall install and maintain Best Management Practices (BMPs) in accordance with the Stormwater Pollution Prevention Plan (SWPPP).

5.12.1.3 CONTRACTOR shall provide, implement and maintain street sweeping measures at the area indicated on the plans, to prevent tracking of sediment by vehicular traffic onto adjacent streets and the adjacent stormwater collection system.

5.12.1.4 CONTRACTOR shall implement dust control measures per plans to minimize and control dust generation due to construction activities.

5.12.1.5 CONTRACTOR shall protect, per SWPPP plans, all stormwater facilities. Such protections shall not pose a traffic hazard and must be removed after completion of construction and final stabilization.

5.12.1.6 CONTRACTOR shall protect any drywell located at adjacent businesses per SWPPP plans. Drywells are State jurisdiction and are covered by Aquifer Protect Permit.

5.12.1.7 CONTRACTOR shall take all necessary actions to prevent stormwater discharges from entering the adjacent properties whether such discharges result from construction related activities.

5.12.1.8 CONTRACTOR shall inspect, maintain and repair SWPPP BMPs through the duration of the Project. The inspections shall be conducted as follows:

- A. Once every 14 calendar days
- B. Prior to a forecast storm
- C. Within 24 hours of any storm that drops 0.5-inches or more of precipitation
- D. At 24-hour intervals during extended precipitation

5.12.2 This project is not located within ¼ mile of the Colorado River segment that is listed as impaired in the ADEQ's 2006/2008 303 (d) list.

5.13 SEPARATE CONTRACTS TO BISBEE

5.13.1 If any part of CONTRACTOR's Work depends on proper execution or results of Work performed by BISBEE or any separate contractor, CONTRACTOR shall, prior to proceeding with the Work, promptly report to BISBEE's Representative any apparent discrepancies or defects in such other Work that render it unsuitable for such proper execution and results. Failure of CONTRACTOR to report shall constitute an acceptance of BISBEE's or separate CONTRACTOR's Work as fit and proper to receive the Work, except as to defects which may subsequently become apparent in such Work by others.

5.13.2 Should CONTRACTOR wrongfully cause damage to the Work or property of BISBEE, or to other Work or property on the site, CONTRACTOR shall promptly remedy such damage.

5.13.3 Should CONTRACTOR wrongfully delay or cause damage to the Work or property of any separate contractor, CONTRACTOR shall, upon due notice, promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute.

5.14 TESTS

5.14.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, CONTRACTOR shall give BISBEE's Representative timely notice of its readiness so BISBEE's Representative may observe such inspection, testing or approval. CONTRACTOR shall bear all costs of such inspections, test or approvals conducted by public authorities. BISBEE shall reserve the right to conduct additional tests and inspections, and, unless otherwise provided, BISBEE shall bear all costs of other inspections, tests or approvals.

5.14.2 Required certificates of inspection, testing or approval shall be secured by CONTRACTOR and CONTRACTOR shall promptly deliver them to BISBEE's Representative.

**PART VI
GENERAL CONDITIONS**

CHANGES IN THE WORK

6.1 CHANGES IN THE WORK

- 6.1.1 BISBEE, without invalidating the Contract and without notification of sureties, may order extra Work, make changes by altering, or delete any portion of the Work as specified herein, or as deemed necessary or desirable by BISBEE. All such Work shall be executed under the conditions of the original Contract except that any claim for extension of time and additional cost caused thereby shall be adjusted at the time of ordering such change or extra Work.
- 6.1.2 In giving instructions, BISBEE's Representative shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the purposes of the Work. No extra Work or change shall be made unless in pursuance of a written order by BISBEE. Any claim for an addition to the Contract Price shall not be valid unless the change was so ordered, except in an emergency endangering life or property. If CONTRACTOR claims that any instructions involve extra cost under the Contract, it shall within forty-eight (48) hours after the receipt of such instructions, provide notice to BISBEE's Representative of such claim, and before proceeding to execute the Work, except in an emergency endangering life or property, and the procedure shall then be as provided to approve Change Orders.
- 6.1.3 It is mutually understood that it is inherent in the nature of municipal construction that some changes in the Plans and Specifications may be necessary during the course of construction to adjust them to field conditions, and that it is of the essence of the Contract to recognize a normal and expected margin of change. BISBEE shall have the right to make such changes in the Plans and the character of the Work as may be necessary or desirable to ensure the completion of the Work in the most satisfactory manner without invalidating the Contract.
- 6.1.4 Changes approved by BISBEE's Representative for use of the Owner's Allowance, or incorporated in a Change Order issued by BISBEE, shall be written so as to indicate acceptance on the part of CONTRACTOR as evidenced by its signature.

6.2 PRICING OF CHANGES

- 6.2.1 If a Change Order provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:
- 6.2.1.1 Where the Work involved is covered by unit prices contained in the Schedule of Values, by application of the unit prices to the quantities of the items involved, as mutually agreed to by CONTRACTOR and BISBEE's Representative.
- 6.2.1.2 By mutual acceptance of either a unit price not contained in the Bid Schedule,

or of a lump sum price. CONTRACTOR shall furnish BISBEE's Representative with an itemized cost breakdown together with supporting data including the quantities used to compute the unit price and/or lump sum price of the Work.

6.2.1.3 Only when methods 6.2.1.1 and 6.2.1.2 above are exhausted, then on the basis of the Cost of Work plus CONTRACTOR's Fee for overhead and profit, as described below. (Cost-Plus Basis).

6.2.1.4 Whenever the cost of any work is to be determined on a Cost-Plus Basis, CONTRACTOR will submit on forms acceptable to BISBEE's Representative, daily work sheets showing an itemized breakdown together with supporting data used to arrive at a final cost for the Work. No payment will be made for work not verified by BISBEE's Representative. Final cost for the Change in the Work shall be reflected and formalized in a Change Order.

6.2.2 Allowable costs for any Change Order shall be limited to the following:

6.2.2.1 Costs of labor, including social security, Medicare and unemployment insurance, fringe benefits available to CONTRACTOR's employees generally.

6.2.2.2 Costs of first line supervision labor, including labor burden as described in Section 6.2.2.1. "First Line Supervision" shall mean a working foreman or lead craft worker other than the Project superintendent.

6.2.2.3 Actual cost of the Project superintendent associated with any period of compensable delay caused by issuance of the Change Order. In the absence of a compensable delay, all of the Project superintendent's time is considered to have been paid for as part of the overhead.

6.2.2.4 Actual costs of Materials, including sales tax and delivery.

6.2.2.5 Rental costs of machinery and equipment, based on the latest "schedule of equipment rates" used by the Arizona Department of Transportation, exclusive of small tools, whether rented from CONTRACTOR or others.

6.2.2.6 Overhead and profit as specified below. "Overhead" shall include the following: Preparation of all paperwork related to changes in the Work, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the Project superintendent; vehicles, including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and record drawings; general office expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance, and all taxes; and all other expenses not specifically included in Section 6.2.2.1

6.2.3 Upon receipt of a proposed Change Order, CONTRACTOR shall promptly proceed with the change in the Work and advise BISBEE's Representative within seven (7) days of CONTRACTOR's agreement or disagreement with the method, if any, provided in the proposed Change Order for determining the proposed adjustment in the Contract Price or Contract Time. Failure to return the Change Order to BISBEE's Representative within

seven (7) days indicates CONTRACTOR's agreement therewith, including adjustment in Contract Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

- 6.2.4 If CONTRACTOR disagrees with the method for adjustment in the Contract Sum, the adjustment shall be determined by BISBEE on the basis of any of the methods described in Sections 6.2.1.1 through 6.2.1.4.
- 6.2.5 Overhead and Profit for actual cost of work performed by CONTRACTOR and/or his Subcontractor, shall be determined in accordance with MAG Section 109.5. Cumulative total markup for all tiers of contractors and subcontractors shall not exceed thirty percent (30%).
- 6.2.6 If the net value of a change results in a credit from CONTRACTOR or Subcontractor, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

6.3 ADJUSTMENTS TO CONTRACT SUM OR QUANTITIES

- 6.3.1 For a decrease greater than 20 percent in either the Contract Sum, excluding the Owner's Allowance, or the total cost of a major item and when a reasonable cost analysis supports an increase in the pro rata share of fixed cost chargeable to this item in total, an increase adjustment in the monies due CONTRACTOR may be made. This adjusted compensation will not exceed 80 percent of the original Contract Sum, excluding the Owner's Allowance, or, if for a unit price item, the adjustment will not exceed 80 percent of the original extended unit price. This does not apply to items labeled as contingent items in the Contract Documents.
- 6.3.2 For an increase greater than 20 percent in either the Contract Sum, excluding the Owner's Allowance, or the total cost of a major item, any adjustment made will only apply to that cost in excess of 120 percent of the original Contract Sum, excluding the Owner's Allowance, or, in the case of a major item, in excess of 120 percent of the original proposed extended unit price. If either Party presents a reasonable cost analysis that shows a change in the pro rata share of fixed costs chargeable to this item in total, an increase or decrease adjustment will be made. This increase or decrease adjustment will be made on such basis as is necessary to cover a reasonable estimate of cost, plus an allowance, not to exceed 15 percent, for overhead and profit. If the Parties are unable to reach an agreement, BISBEE has the authority to order the excess work done on an actual cost basis.
- 6.3.3 For either an increase or decrease in cost, no claim shall be made by CONTRACTOR for any loss of anticipated profits.
- 6.3.4 For purposes of this Paragraph 6.3, a "major item" is determined as follows:

Original Contract Amount

\$0.00 to \$1,000,000

\$1,000,000.00 to \$5,000,000.00

\$5,000,000.00 or greater

Dollar Value of Major Item

Lesser of \$50,000 or 10% of original contract amount

5.0% of original contract amount

\$250,000.00 or 2.5% of original contract amount, whichever is greater.

6.4 EFFECT ON SURETIES

- 6.4.1 All changes authorized by the Contract Documents may be made without notice to or consent of the Sureties on the Contract Bonds, and shall not reduce the Sureties' liability on the Bonds.
- 6.4.2 BISBEE reserves the right to require additional Payment or Performance Bonds to secure a Change Order.

**PART VII
GENERAL CONDITIONS**

MATERIALS AND WORKMANSHIP

7.1 GENERAL

- 7.1.1 All equipment, Materials, and articles incorporated in the Work covered by this Contract shall be new and subject to review and acceptance by BISBEE's Representative unless otherwise specifically provided for in the Contract Documents.
- 7.1.2 Where equipment, Materials, or articles are referred to in the Specifications as "or equal to" any particular standard, A/E shall decide the question of equality.
- 7.1.3 Wherever any standard published specification is referred to, the latest edition or revision, including all amendments, shall be used unless otherwise specified. Materials of a general description shall be the best of their several kinds, free from defects, and adapted to the use for which provided. The physical characteristics of all Materials not particularly specified shall conform to the latest standards published by the American Society for Testing and Materials (ASTM), where applicable. All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted.
- 7.1.4 All Work shall be done and completed in a thorough, workmanlike manner in conformance with the Contract Documents. BISBEE's Representative shall have the authority to reject Work not in conformance with the Contract Documents.
- 7.1.5 In the event CONTRACTOR discovers any omission from these Specifications or from the Plans, it shall be the duty of CONTRACTOR to call BISBEE's Representative's attention to apparent errors or omissions and request instructions before proceeding with the Work. BISBEE's Representative shall immediately notify A/E who shall, by appropriate instructions, correct errors and/or omissions, which instructions shall be as binding upon CONTRACTOR as though contained in the original Specifications or Plans.
- 7.1.6 CONTRACTOR may appeal a decision of A/E made pursuant to Section 7.1 to BISBEE's Representative. Such appeal must be made in writing within forty-eight (48) hours of A/E's decision or the right to appeal is waived.

7.2 SUBSTITUTION OF MATERIAL OR EQUIPMENT

Substitution of material or equipment shall only be made pursuant to Section 1.8.

7.3 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 7.3.1 Shop drawings are drawings, diagrams, schedules and other data specially prepared for the Work by CONTRACTOR or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 7.3.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CONTRACTOR to illustrate a material, product or system for some portion of the Work.
- 7.3.3 Samples are physical examples that illustrate materials, equipment or workmanship, and establish standards by which the Work will be judged.
- 7.3.4 All Materials to be incorporated in the Work shall be subject to sampling, testing and acceptance. Samples furnished by CONTRACTOR shall be representative of the materials to be used. BISBEE's Representative and A/E may select samples or may require that samples be delivered to and tested at a laboratory designated by BISBEE's Representative at no additional cost to BISBEE.
- 7.3.5 CONTRACTOR shall prepare, review, approve all shop drawings, product data and samples required by the Contract Documents and submit to BISBEE's Representative with reasonable promptness and in such sequence as to cause no delay in the Work or in the Work of BISBEE or any separate contractor. BISBEE's Representative shall immediately forward such shop drawings, product data and samples to A/E. CONTRACTOR shall cooperate with BISBEE's Representative and A/E in the coordination of the shop drawings, product data and samples with those of other separate contractors.
- 7.3.6 By preparing, approving and submitting shop drawings, product data and samples, CONTRACTOR represents that CONTRACTOR has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the Work, the Project and the Contract Documents.
- 7.3.7 CONTRACTOR shall:
 - 7.3.7.1 Review each submittal and check for compliance with Contract Documents prior to submitting for review.
 - 7.3.7.2 Organize submittals continuing multiple differing items by sorting/dividing by the applicable MAG Section or CSI Division so that items can be more easily identified and reviewed against the proper requirements by the reviewer.
 - 7.3.7.3 Stamp each submittal with uniform approval stamp before submitting to BISBEE's Representative.

- A. Stamp to include project name, submittal number, specification number, CONTRACTOR reviewer's name, date of submittal has been reviewed, checked, and approved for compliance with the Contract Documents.
- B. BISBEE's Representative will not transmit review submittals to the A/E that do not bear CONTRACTOR's approval stamp and will return them to CONTRACTOR without action.

7.3.8 A/E will review and approve or take other appropriate action upon CONTRACTOR's submittals such as shop drawings, product data and samples for conformance with the Specifications. A/E's approval of the specific item shall not indicate approval of an assembly of which the item is a component.

7.3.9 All sampling and testing of Materials shall be done in accordance with the latest designated standard AASHTO or ASTM methods, or in accordance with special methods designated in the Specifications.

7.4 MATERIALS FURNISHED BY BISBEE

All Materials and/or services to be furnished by BISBEE are indicated in the Supplementary conditions. The cost of CONTRACTOR handling and placing BISBEE-furnished Materials shall be included in the Contract price.

7.5 STORAGE OF MATERIALS

7.5.1 CONTRACTOR shall provide proper storage facilities and exercise such measures as will ensure the preservation of the specified quality and fitness of all Materials and equipment to be used in the Work. Stored Materials shall be located so as to provide reasonable access for inspection. That portion of the right-of-way not required for public travel may be used for storage purposes to the extent it does not interfere with public travel, unless prohibited by the other provisions of the Project Specifications. Any additional space required shall be provided by CONTRACTOR at no cost to BISBEE. Protection of Materials and equipment stored on the site shall be the responsibility of CONTRACTOR. BISBEE reserves the right to direct CONTRACTOR to provide proper means of protection for Materials if such is deemed advisable by BISBEE's Representative; however, the exercise of or failure to exercise this right shall not be deemed to relieve CONTRACTOR of its primary responsibility for protecting the material and equipment. CONTRACTOR shall provide suitable warehouses or other adequate means of protection for such of the Materials and equipment as require storage or protection. CONTRACTOR shall store and care for the material and equipment in the most suitable manner to protect them from distortion, rain, dust, or other damage. CONTRACTOR shall maintain all material and equipment in accordance with the manufacturer's instructions. The cost of replacing any material or equipment damaged in storage shall be borne by CONTRACTOR, and the fact that material or equipment has been damaged after partial payment has been made shall not relieve

CONTRACTOR of its primary responsibility. No motor shall be left uncovered or unprotected.

- 7.5.2 Payments for Materials or equipment stored off the site shall be conditioned upon submission by CONTRACTOR of bills of sale to establish BISBEE's title to such Materials or equipment and certificate of insurance for storage in a bonded warehouse or facility agreeable to BISBEE.

7.6 REJECTED MATERIALS AND WORK

BISBEE's Representative shall have the authority to reject Materials which do not conform to the Contract Documents. Rejected Materials shall be removed immediately from the site of the Work unless otherwise permitted by BISBEE's Representative. No rejected Materials, the defects of which have been subsequently corrected, shall be used unless accepted by BISBEE's Representative. If CONTRACTOR fails to remove and replace rejected material, BISBEE has authority to do so and to deduct the cost thereof from any monies due or to become due CONTRACTOR.

7.7 GUARANTEE OF WORK - WARRANTY

- 7.7.1 CONTRACTOR warrants to BISBEE that all Materials and equipment furnished under this Contract will be new unless otherwise specified and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by BISBEE's Representative, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of Materials and equipment. This warranty is not limited by any other provisions of the Contract Documents.
- 7.7.2 CONTRACTOR shall promptly correct all Work rejected as defective or as failing to conform to the Contract Documents whether observed before or after acceptance and whether or not fabricated, installed or completed. CONTRACTOR shall bear all costs of correcting such rejected Work, including compensation for the additional services of A/E made necessary thereby.
- 7.7.3 If, within one year after the date of final acceptance by BISBEE of all Work required by the Contract Documents or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, CONTRACTOR shall correct it promptly after receipt of written notice from BISBEE to do so unless BISBEE has previously given CONTRACTOR a written acceptance of such condition. This obligation shall survive termination of the Contract, but it shall in no way limit the warranty set forth in Section 7.7.1. BISBEE shall give the notice required herein promptly after discovery of the condition.

- 7.7.4 CONTRACTOR shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected unless removal is waived by BISBEE.
- 7.7.5 If CONTRACTOR does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from BISBEE's Representative, BISBEE may remove it and may store the Materials or equipment at the expense of CONTRACTOR. If CONTRACTOR does not pay the cost of such removal and storage within fourteen (14) days thereafter, BISBEE may upon fourteen (14) additional days written notice sell such Materials and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by CONTRACTOR including, but not limited to, compensation for A/E's additional services made necessary thereby. If the proceeds of sale do not cover all such costs, the amount to be paid by BISBEE to CONTRACTOR under the Contract shall be reduced by the deficiency. If payments then due to CONTRACTOR are insufficient to cover deficiency, CONTRACTOR shall pay the difference to BISBEE.
- 7.7.6 CONTRACTOR shall bear the costs of making good all Work of BISBEE or separate contractors destroyed or damaged by CONTRACTOR's correction or removal of defective Work.
- 7.7.7 Nothing contained in this Section 7.7 shall be construed to establish a period of limitation with respect to any other obligation that CONTRACTOR might have under the Contract Documents. The establishment of the time period of one year after final acceptance or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of CONTRACTOR to correct the Work and has no relationship to the time within which CONTRACTOR's obligation to comply with the Contract Documents may be sought to be enforced. Nor the time within which proceedings may be commenced to establish CONTRACTOR's liability with respect to CONTRACTOR's obligations other than specifically to correct the Work.
- 7.7.8 In the event it is necessary for BISBEE to file suit to enforce any liability of CONTRACTOR, BISBEE shall be entitled to recover from CONTRACTOR, a reasonable sum as and for costs and attorney's fees, in addition to all other amounts found due and owing.

7.8 NO EXERCISE OF AUTHORITY BY A/E

Neither A/E's representative's authority to act under this Part VII, nor any decision made by such representative in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of A/E's representative to CONTRACTOR, any Subcontractor, any of their agents or employees or any other person performing any of the Work.

**PART VIII
GENERAL CONDITIONS**

LEGAL RELATIONS AND RESPONSIBILITY

8.1 LAWS TO BE OBSERVED

- 8.1.1 CONTRACTOR is presumed to know, and at all times shall observe and comply with, all federal and state laws and local ordinances, including but not limited to Workers' Compensation, occupation diseases, and unemployment compensation laws together with the payment of all premiums and taxes therefore; also all laws, ordinances, and regulations in any manner affecting the conduct of the Work, including environmental laws and regulations and shall indemnify and save harmless BISBEE and its representatives against any claim arising from the violation of such laws, bylaws, ordinances, or regulations by CONTRACTOR, Subcontractors and their employees and agents.
- 8.1.2 If CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances and regulations, CONTRACTOR shall assume full responsibility therefore and shall bear all costs attributable thereto.

8.2 HOURS OF LABOR

All Contracts made by or on behalf of the State of Arizona, or any of its political subdivisions, with any person for the performance of any Work, or the furnishing of any material manufactured within the State, shall comply with the Fair Labor Standards Act and Section 23-391, Arizona Revised Statutes, as amended.

8.3 ALIEN LABOR

A person not a legal alien, citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal works or employment; provided that nothing herein shall be construed to prevent the working of prisoners by the state or by any county or municipality thereof on street or road work or other public work.

8.4 LABOR DISCRIMINATION

- 8.4.1 Attention is directed to Arizona Revised Statutes, Title 41, Chapter 9, Article 4, as amended, entitled "Discrimination in Employment."
- 8.4.2 When federal funds are to pay a portion of the cost of this Project, then CONTRACTOR shall also comply with applicable paragraphs in the Supplementary conditions.

8.5 PERMITS, LICENSES, FEES AND TAXES

Except as otherwise provided in the Contract Documents, it is the duty of CONTRACTOR to procure all permits and licenses, pay all charges, fees and sales tax, and provide any notices necessary and incident in performing the Work unless noted otherwise. There will be no charge to CONTRACTOR for any necessary BISBEE issued permits, provided that the permits are issued prior to the commencement of the Work. Permits requested and issued after commencement of the Work shall be paid for by CONTRACTOR at double the standard fee rate, for which BISBEE will assume no responsibility.

8.6 PATENTED DEVICES, MATERIALS, AND PROCESSES

CONTRACTOR shall indemnify and save harmless BISBEE and its duly authorized representatives from all liabilities, judgments, costs, damages and expenses which may result from the infringement of any patents, trademarks or copyrights by reason of the use of any proprietary Materials, devices, equipment or processes incorporated in or used in the performance of the Work under this Contract.

8.7 SURVEY LAND MONUMENTS

Survey land monuments and property marks shall not be moved or otherwise disturbed by CONTRACTOR until an authorized agent, of the agency having jurisdiction over the land monuments or property marks setting, has witnessed or otherwise referenced their location, and only then in accordance with the requirements of the agency having jurisdiction.

8.8 PROTECTION OF PERSON AND PROPERTY

- 8.8.1 CONTRACTOR shall adopt every practical means and comply with all laws, ordinances and regulations in order to minimize interferences to traffic and inconveniences, discomfort and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded.
- 8.8.2 If an unsafe condition arises or exists during the progress of the Work, or if BISBEE has reason to believe that an unsafe condition exists, CONTRACTOR shall suspend the Work wholly or in part for such period as may be necessary to correct the unsafe condition.
- 8.8.3 Neither CONTRACTOR nor the Subcontractor shall trespass upon private property. CONTRACTOR shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from operations of CONTRACTOR or Subcontractors completing this Work. CONTRACTOR shall ensure that both CONTRACTOR and Subcontractors comply with the laws and regulations of BISBEE, county and state relating to the safety of persons and property. CONTRACTOR will be held responsible and required to make good any injury or damage to persons or property caused by CONTRACTOR or Subcontractors or any agent or employee of either during the progress of the Work and until its final acceptance.

8.8.4 CONTRACTOR shall protect against injury or damage to any pipes, sewer conduits, electrical conduits, lawns, gardens, shrubbery, trees, fences or other structures or property, public and/or private, encountered in this Work except as stipulated elsewhere herein. CONTRACTOR shall be responsible and liable for any injury or damage or repair to such items and property.

8.8.5 CONTRACTOR shall have total responsibility for the safety conditions at the Work site.

8.9 CONSTRUCTION SAFETY PROGRAM AND REGULATIONS

The Arizona Occupational Safety and Health Act and the conditions set forth in the Occupation Safety and Health Standards (OSHA) shall constitute the outline for the safety program to be adhered to during the course of the Project. CONTRACTOR shall keep a copy of these publications available at the jobsite for reference, as well as a copy of CONTRACTOR's safety program. A copy of the agenda and any handouts provided for CONTRACTOR's weekly tail gate meetings shall be submitted to BISBEE's Representative at each weekly construction progress meeting.

8.10 PROTECTION OF ANTIQUITIES

8.10.1 Attention is called to state and federal laws pertaining to the protection and preservation of sites or objects of archaeological, paleontological or historic interest and endangered species.

8.10.2 It shall be a provision of every Contract that when features of archaeological, paleontological or historic interest are encountered or unearthed in the excavation of the roadway prism, or any other excavation, CONTRACTOR shall stop work in the immediate vicinity of such feature, protect it from damage or disturbance, and report promptly to the Director of the Arizona State Museum and BISBEE's Representative. When a possible endangered or threatened species is discovered, CONTRACTOR shall stop work and report promptly to BISBEE's Representative.

8.10.3 Work shall not be resumed in the immediate area until CONTRACTOR is advised by the authorities having jurisdiction that study or removal of the feature or features has been completed. CONTRACTOR will be allowed an appropriate Contract time extension as provided in these General Conditions for construction time lost.

8.11 CONTINGENCIES

All loss or damage arising from obstruction or difficulties which may be encountered in the prosecution of the Work, from the action of the elements or from any act or omission on the part of CONTRACTOR or its Subcontractor or any person or agent employed by CONTRACTOR or its Subcontractor shall be borne by CONTRACTOR.

8.12 NON-RESPONSIBILITY OF BISBEE

Indebtedness incurred for any cause in connection with this Work must be paid by CONTRACTOR, and BISBEE is hereby relieved at all times from any indebtedness or claim other than payments under terms of the Contract.

8.13 PROPERTY RIGHTS IN MATERIAL

Nothing in the Contract shall be construed as vesting CONTRACTOR in any right of property in the Material used after they have been attached or affixed to the Work or the soil and accepted. All such Materials shall become the property of BISBEE upon being so attached or affixed.

8.14 PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

CONTRACTOR shall properly guard and protect all finished or partially finished Work, and shall be responsible for the same until that phase is completed and accepted by BISBEE. Estimate or partial payment of Work so completed shall not release CONTRACTOR from such responsibility, but CONTRACTOR shall turn over the entire Work in full in accordance with the Specifications before final payment can be made.

8.15 ADMINISTRATIVE CLAIMS

Prior to the commencement of litigation related to payment, the Work or the Contract Documents, CONTRACTOR shall file an Administrative Claim with BISBEE. Such Notice shall be filed within 180 days of the accrual of the cause of action pursuant to A.R.S. Section 12-821.01. Otherwise any claim by CONTRACTOR against BISBEE, its officers or employees shall be barred.

**PART IX
GENERAL CONDITIONS**

**COMPLETION OF WORK, LIQUIDATED DAMAGES
AND FINAL ACCEPTANCE**

9.1 FAILURE TO COMPLETE WORK WITHIN TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- 9.1.1 It is hereby understood and mutually agreed by and between CONTRACTOR and BISBEE, that the date of beginning, rate of progress and the time for completion of the Work to be done hereunder are essential conditions of this Contract; and it is further mutually understood and agreed that the Work embraced in this Contract shall be complete on or before the dates set forth in Section 9.2 of this Contract. CONTRACTOR agrees that said Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of time he specified. It is expressly understood and agreed by, and between, CONTRACTOR and BISBEE that the time for completion of the Work shall be in the time as identified in these Contract Documents.
- 9.1.2 For each day that any part of the Work remains uncompleted after the expiration of the time specified and/or allowed for completion of the Work stipulated in the Contract or ordered after the Contract is signed, the sum per day set forth in Section 9.2 shall be deducted from any monies due CONTRACTOR, or if no money is due CONTRACTOR, BISBEE shall have the right to recover said sum or sums from CONTRACTOR, from the Surety, or both.
- 9.1.3 It shall be understood that the time to complete the Project, beyond the contractual date of completion, is in itself prima facie evidence of actual damages incurred, and the amount of these deductions are to cover the liquidated damages caused by the loss of use, or limited use, of the Project and other additional BISBEE incurred losses, or expenses, due to the failure of CONTRACTOR to complete the Work within the time specified.
- 9.1.4 The liquidated damages amounts set within the Contract are fixed and agreed upon by and between CONTRACTOR and BISBEE because of the impracticability and extreme difficulty of fixing and asserting the actual damages BISBEE would in such event sustain, and said amounts are agreed to be the amount of damages which BISBEE would sustain, and said amounts may be retained from time to time by BISBEE from current periodical estimates.
- 9.1.5 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications where a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed as set forth in Section 4.23 of these Contract Documents for the completion of any Work, the new time limit fixed by such extension shall be of the essence of this Contract.

9.1.6 CONTRACTOR shall not be assessed with liquidated damages during any delay in the completion of the Work where an extension of time has been granted by BISBEE pursuant to Section 4.23.

9.2 COMPLETION/LIQUIDATED DAMAGES

9.2.1 Substantial Completion: The date of Substantial Completion of the Work, or designated portion thereof, is the date certified in writing by BISBEE's Representative when construction is sufficiently complete, in accordance with the Contract Documents as they may have been modified by any Change Orders agreed to by the Parties, so that BISBEE may use or occupy the Project, or a designated portion thereof, for the purpose for which it was intended. Certification of a designated portion of the Work by BISBEE's Representative as being Substantially Complete and occupancy of that portion thereafter by BISBEE shall neither release, nor otherwise operate to excuse, CONTRACTOR from its duty to complete the remainder of the Work within the Contract Time including liability for liquidated damages.

9.2.2 Final Completion: The date of Final Completion is the date when all items of the Work are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected and a Notice of Final Completion is issued. This is the date upon which the warranty period commences.

9.2.3 Liquidated Damages: BISBEE and CONTRACTOR recognize that time is of the essence for this Contract and that BISBEE will suffer financial loss if the Work and/or portions of the Work are not performed and completed within the times specified plus any extensions thereof allowed in accordance within the Contract Documents. BISBEE and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by BISBEE if the Work or portion of the Work is not completed on time. Accordingly, instead of requiring any such proof, BISBEE and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay BISBEE liquidated damages, at the rate established in CIP2.3 – Construction Services Contract, Paragraph 3.1.1, for each day that expires after the time specified in Section 4 for Substantial Completion, until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by BISBEE, CONTRACTOR shall pay BISBEE liquidated damages, at the rate established in CIP2.3 – Construction Services Contract, Paragraph 3.1.2, for each day that expires after the time specified in Section 5 for final completion and readiness for final payment.

9.3 SPECIAL DAMAGES

CONTRACTOR shall be responsible for all costs associated with additional time expended by CM and/or A/E due to time extensions granted by BISBEE for CONTRACTOR's convenience. The costs shall be paid by CONTRACTOR at the rate

established in the Construction Services Contract, Paragraph 3.2. These costs shall be paid by CONTRACTOR at no additional cost to BISBEE.

9.4 FINAL CLEANING UP

At completion of the Work and prior to final acceptance by BISBEE, a thorough cleaning of the areas affected shall be carried out by CONTRACTOR. CONTRACTOR shall conduct an inspection of sight-exposed surfaces, and all Work areas, to verify that the entire Work is clean. In the event CONTRACTOR fails to do so, BISBEE, may cause this cleaning to be done at CONTRACTOR's expense. The following list is not inclusive, but to act as a guideline:

- 9.4.1 Removal of all paint spots, stains, rubbish, debris, tools and equipment from all areas and broom clean. Steam clean all carpets and mop floors.
- 9.4.2 Cleaning interior and exterior of the buildings, including all windows in any area affected by the Work.
- 9.4.3 Wash down, brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, any adjoining rooms and clean all areas that were affected by the Work.
- 9.4.4 Clear grounds and exterior paved areas and walks of all construction debris, dirt and dust, and repair any and all Site areas damaged during the course of construction and post construction activities.
- 9.4.5 Prior to final acceptance, CONTRACTOR shall conduct an inspection of sight-exposed surfaces, and all Work areas, to verify that the entire Work is clean. In the event CONTRACTOR fails to do so, BISBEE, may cause this Work to be done at CONTRACTOR's expense.

9.5 RECORD DRAWINGS

- 9.5.1 CONTRACTOR shall provide accurate data and field notes as construction progresses in the form of red-lined drawings, for preparation of the Record Drawings by A/E or BISBEE's Representative. Such red-lined drawings shall reflect current changes, shall be kept on site and made available for review by BISBEE's Representative at the time CONTRACTOR submits a monthly progress payment application.
- 9.5.2 CONTRACTOR's monthly progress payments will not be considered as agreed upon and processed until BISBEE's Representative has reviewed the construction progress red-lined drawings and found that they are updated through the payment date.

9.6 COMPLETION AND INSPECTION

- 9.6.1 Substantial Completion Inspection: When CONTRACTOR believes that the Work is substantially complete, it shall request in writing a Substantial Completion Inspection. Within seven (7) days of the receipt of such request, BISBEE's Representative shall conduct the inspection or inform CONTRACTOR that the Work is not ready for the inspection. A Substantial Completion Inspection will be conducted when

CONTRACTOR states in writing that the construction phase Work is sufficiently complete in accordance with the Contract Documents that the Work can be utilized for the purposes it was intended without any outstanding concurrent ongoing Work at the site. If work is deemed to be substantially complete, BISBEE's Representative will issue a Notice of Substantial Completion with a punch list documenting incomplete or deficient work items developed during this inspection. CONTRACTOR shall be present at the Substantial Completion Inspection.

- 9.6.2 Punch list: After the Substantial Completion Inspection BISBEE's Representative shall notify CONTRACTOR of any deficiencies to be remedied prior to final acceptance by preparing a list of deficiencies, known in the industry as a punch list. CONTRACTOR shall remedy all items shown on the punch list prior to final acceptance. No one is authorized to amend the Contract Documents by use of the punch list, which is solely for the benefit of CONTRACTOR to enable it to determine what items must be corrected before final acceptance will be recommended by BISBEE's Representative. BISBEE reserves the right to require compliance with the Contract Documents, notwithstanding the issuance of a punch list or the completion by CONTRACTOR of all items on the punch list.
- 9.6.3 Final Inspection: When CONTRACTOR believes that the punch list items have been addressed, it shall request in writing a Final Inspection. Within seven (7) days of the receipt of such request, BISBEE's Representative shall make a Final Inspection or inform CONTRACTOR that the Work is not ready for Final Inspection. CONTRACTOR shall be present at the Final Inspection. The purpose of the Final Inspection is to determine whether the Work has been completed in accordance with the Contract Documents, including all Change Orders and all interpretations and instructions previously issued. If during the Final Inspection it is determined that CONTRACTOR has not completed the punch list items, and a second inspection is required, CONTRACTOR shall be charged for the cost of A/E and other design professionals who attend the second inspection.

9.7 FINAL ACCEPTANCE

- 9.7.1 After all Work under the Contract Documents has been completed as determined by BISBEE's Representative, including Work found to be incomplete pursuant to Section 9.6, and all required closeout documentation has been received, BISBEE's Representative will issue the Notice of Final Completion. BISBEE will make final acceptance promptly unless BISBEE has reason to believe the Work is not ready for final acceptance.
- 9.7.2 Unless otherwise specified in either Section 9.2 or under Supplementary Conditions, no partial acceptance of any portion of the Work will be made and no acceptance other than the final acceptance to the overall completed Project will be made. No inspection or acceptance pertaining to specific parts of the Work shall be construed as final acceptance of any part until the overall final acceptance is made by BISBEE.

**PART X
GENERAL CONDITIONS**

PAYMENTS TO CONTRACTORS

10.1 GENERAL

- 10.1.1 This project is funded entirely by local funding sources. Therefore, Davis-Bacon wages and DBE/MBE/WBE participation requirements will not be in effect for this project.
- 10.1.2 The basis of payment for construction of a Project shall be in full for all Work actually performed in accordance with the Plans and Specifications, and shall include all labor and Materials incorporated in the completed Work.
- 10.1.3 Application for payment shall be made on BISBEE's "Payment Request Form" utilizing complete provisions provided by the form, accompanied by CONTRACTOR's invoice on company letterhead.
- 10.1.4 In the event of a dispute over any amounts owed, BISBEE shall pay the undisputed amount and proceed in good faith to resolve the dispute. Pending final resolution of the dispute, CONTRACTOR shall proceed diligently with performance of the Contract and BISBEE shall continue to make payments in accordance with the Contract Documents to the extent such payments are undisputed by BISBEE.

10.2 PARTIAL PAYMENT

- 10.2.1 Once each month BISBEE will make a partial payment to CONTRACTOR on the basis of a duly certified and approved estimate prepared by CONTRACTOR and approved by BISBEE's Representative for Work completed through the last day of the preceding calendar month. If requested by BISBEE's Representative, CONTRACTOR shall provide supporting data substantiating its corrections. The estimate will cover the Work performed by CONTRACTOR during the preceding calendar month plus the invoice cost of material suitably stored at the site of the Project if CONTRACTOR desires payment for material stored. The partial payment shall be paid on or before fourteen (14) days after the CONTRACTOR's estimate of the work is certified and approved by BISBEE. The estimate of the Work shall be deemed received by BISBEE on submission to BISBEE's Representative.
- 10.2.2 Cost of material properly stored will be based on vendors' invoices listed by CONTRACTOR. A copy of each such invoice shall accompany the first estimate in which payment is requested for Material covered by the invoice. This list shall be revised and brought up-to-date by CONTRACTOR for each estimate. The revised list shall show the total amount of each invoice, the invoice amount that has been incorporated in the Work, and the remaining invoice amount that is stored for which payment is required that month. Only those Materials that will become an integral part of the final completed Project may be included for partial payment as Material stored. Partial payments for

jobsite delivered material or equipment will in no way reduce CONTRACTOR's responsibility for such Material or equipment until it has been installed.

- 10.2.3 Retainage: Until final completion and final acceptance, retainage from progress payments to CONTRACTOR shall be ten percent (10%) of each payment. After the Contract is fifty percent (50%) complete, however, the remaining retention shall be five percent (5%) of each payment provided CONTRACTOR is making satisfactory progress on the Project as determined by BISBEE; otherwise, retention shall remain at ten percent (10%). CONTRACTOR will request a reduction in retention in writing.
- 10.2.4 Schedule of Values: Not later than seven (7) days before the first Application for Payment, CONTRACTOR shall submit to BISBEE's Representative a schedule of values reflecting, as nearly as reasonably possible, the actual values of the various components of the Work. CONTRACTOR shall provide separate line items for CONTRACTOR's overhead and profit, supervision, insurance, bonds, allowances, and taxes. If requested by BISBEE's Representative, CONTRACTOR shall provide supporting data substantiating its correctness.
- 10.2.5 The CONTRACTOR shall submit with first payment application conditional lien releases from the CONTRACTOR and any Subcontractors that did work the first 30 days. The CONTRACTOR shall submit unconditional lien releases from Subcontractors in the amount paid from previous Certificates of Payment with new Applications for Payment and final lien releases from Subcontractors prior to Final Payment. The CONTRACTOR shall also provide BISBEE with a complete list of all first-tier Subcontractors and Suppliers in order that BISBEE may check that list against those that provide preliminary 20-day notices.
- 10.2.6 No partial payment shall be made until updated red-line drawings are reviewed and approved by BISBEE's Representative, through the date for which partial payment is requested, reviewed, and determined to reflect actual Work in place.

10.3 PAYMENT OF ITEMS IN BID

- 10.3.1 Only those items listed in the Bid Schedule are pay items.
- 10.3.2 Compensation for all Work necessary for the completion of the Project shall be included by CONTRACTOR in the price bid for the items shown in the Bid.

10.4 PAYMENT FOR "EXTRA WORK" AND FOR "CHANGES IN THE WORK"

Payment for changes in the Work and for claims for extra Work will be made as stated in Part VI of these General Conditions.

10.5 ASSIGNMENT OF PAYMENTS

10.5.1 Claims for monies due or to become due CONTRACTOR may be assigned to a bank, trust company, or other financial institution, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment may be made to one (1) party as agent or trustee for two (2) or more parties participating in such financing.

10.5.2 No assignment by CONTRACTOR of any Contract to be entered into hereunder, or of any part thereof, or of funds to be received thereunder by CONTRACTOR will be recognized by BISBEE unless such assignment has had prior consent of BISBEE and the surety has been given notice of such assignment in writing and has consented thereto in writing.

10.6 FINAL PAYMENT AND CONTRACT CLOSEOUT

10.6.1 When CONTRACTOR determines that the Contract is complete and all items on the punch list have been satisfied, or contends that such items are not required by the Contract Documents, CONTRACTOR shall submit a request for final payment.

10.6.2 Simultaneously with CONTRACTOR's request for final payment, CONTRACTOR shall submit the following items to BISBEE's Representative:

10.6.2.1 Red-line construction record drawings

10.6.2.2 Guarantees and Warranties

10.6.2.3 Three sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation and all other equipment required by the Supplementary conditions to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly and concisely detailed.

10.6.2.4 Affidavit(s) Regarding Settlement of Claims

10.6.2.5 Other items required by closeout checklist or contained in the Supplementary Conditions and/or Technical Specifications.

10.6.3 Upon receipt of the submittals required in Section 10.6.2, BISBEE's Representative shall prepare a written estimate of the sum due to CONTRACTOR. This estimate shall take into account the Contract Price, as adjusted by any Change Orders, amounts already paid, and sums to be retained for incomplete Work, liquidated damages, and for any other cause under the Contract Documents. BISBEE's Representative shall prepare a statement of final inspection, stating that the work has been given a final inspection, that CONTRACTOR has submitted the required documents, setting forth with detail any deviations in the Work as completed from the Contract Documents, and estimating the

cost of correction of such deviations. BISBEE's Representative shall provide a copy of the statement of final inspection and estimate of the sum due to CONTRACTOR.

10.6.4 If CONTRACTOR contests the estimate of sums due prepared by BISBEE's Representative, within seven (7) days following delivery to CONTRACTOR of estimate of the sum due, CONTRACTOR shall file its protest in writing with BISBEE's Engineer, setting forth in detail all grounds alleged by CONTRACTOR to justify an adjustment to BISBEE's Representative's final estimate. Failure to file a protest within the seven (7) days specified above shall constitute a waiver and acceptance by CONTRACTOR of BISBEE's Representative's estimate.

10.6.5 Neither acceptance of, nor payment for, the Work or any part thereof, nor any extension of time, nor any possession taken by BISBEE shall operate as a waiver of any of the provisions of the Contract Documents, nor shall a waiver of any breach of the contract be held to be a waiver of any other or subsequent breach. Acceptance by BISBEE shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of the Contract Documents.

10.6.6 The making of final payment shall constitute a waiver of Claims by BISBEE except those arising from liens, Claims, security interests or encumbrances arising out of the Contract and unsettled; failure of the Work to comply with the requirements of the Contract Documents; or terms of special warranties required by the Contract Documents.

10.6.7 Acceptance of final payment by CONTRACTOR, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

10.7 USE OF OWNER'S ALLOWANCE

10.7.1 The Owner's Allowance is not a part of the total bid price. This allowance is to be used at the sole discretion of BISBEE for the completion of unspecified work not covered by other bid items. Authorization for work under the allowance shall be made in writing by BISBEE prior to the start of such work.

10.7.2 When applicable unit costs from the bid schedule can be used, CONTRACTOR shall be bound by these costs for the additional work compensated through the allowance; otherwise the cost of allowance work shall be estimated in the same manner as a change order in accordance with Section 6.2 of the General Conditions.

10.7.3 After the additional work is approved, CONTRACTOR may invoice the cost of such work in accordance with the payment process in the General Conditions.

10.7.4 Any unused part of the Owner's Allowance shall be retained by BISBEE at the end of the project via a deductive change order.

